TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 243.

WILLIAM H. POPE, PLAINTIFF IN ERROR,

vs.

JOHN M. C. WILLIAMS AND JOHN W. HARPER, CONSTITUTING THE BOARD OF REGISTRY FOR ELEVENTH DISTRICT OF MONTGOMERY COUNTY, MARYLAND.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

FILED OCTOBER 7, 1908.

(19,164.)

(19,154.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 503.

WILLIAM H. POPE, PLAINTIFF IN ERROR,

vs.

JOHN M. C. WILLIAMS AND JOHN W. HARPER, OFFICERS OF REGISTRATION, CONSTITUTING THE BOARD OF REGISTRY FOR ELECTION DISTRICT No. 7 OF MONTGOMERY COUNTY, MARYLAND.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

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1 *Record.*

In the Court of Appeals of Maryland.

WILLIAM H. POPE
vs.
JOHN M. C. WILLIAMS, JOHN W. HARPER, Board of Registry, &c. } No. —.

Appeal from the circuit court for Montgomery county.

William H. Pope, for appellant.
Bowie F. Waters, Robert B. Peter, for appellee.
Filed October 8, 1903.

2 The Court of Appeals of Maryland.

STATE OF MARYLAND, *sct:*

At a court of appeals for the State of Maryland, begun and held for the said State, at the city of Annapolis, on the first Monday in October, being the fifth day of said month, in the year of our Lord one thousand and nine hundred and three, and of the Independence of the United States the one hundred and twenty seven—present Chief Judge McSherry. Page. Pearce. Fowler. Boyd. Jones. Briscoe. Schmucker—among others the following proceedings to wit:

3 *Petition for Allowance of Writ of Error.*

In the Court of Appeals of Maryland.

WM. H. POPE
vs.
JOHN M. C. WILLIAMS ET AL.

Petition for allowance of writ of error from the Supreme Court of the United States, Wm. H. Pope, pet.

Writ of error allowed, Nov. 3. 1903. Bond for costs only in penal sum of $250—

MELVILLE W. FULLER,
Chief Justice of the United States.

Filed November 4th 1903.

4 *Petition for Allowance of Writ of Error.*

In the Court of Appeals of Maryland.

WILLIAM H. POPE
vs.
JOHN M. C. WILLIAMS and JOHN W. HARPER, as the Board of Registry of Election District No. 7 of Montgomery County, Maryland.

Petition for allowance of writ of error from the Supreme Court of the United States.

The petition of William H. Pope, appellant above named, respectfully shows:

In the transcript of record herewith submitted, the following facts appear:

The litigation in the Maryland courts was a statutory proceeding, instituted to obtain a reversal of the action of the appellees in refusing—on September 29, 1903—to register petitioner as a qualified voter.

5 At the time the application to be registered was made, petitioner had been a resident of Maryland from June 7, 1902, (when he removed into Montgomery county, in said State, from the District of Columbia) and the constitution of Maryland, as one of the conditions of qualifications imposed on would-be-voters, required a residence of one year in the State. The sole ground upon which the refusal to register petitioner was based, was that petitioner had not complied with the following act of the legislature of Maryland, approved on March 29, 1902, (sec. 25 B, art. 33, Md. Public Gen. Laws, 1902, p. 204):

"SECTION 25 B. All persons who after the passage of this act shall remove into any county of this State or into the city of Baltimore from any other State, district, or Territory, shall indicate

6 their intent to become citizens and residents of this State by registering their names in a suitable record book to be procured and kept for the purpose by the clerk of the circuit court for the several counties, and by the clerk of the superior court of Baltimore city; such record to contain their names, residence, age, and occupation, and the intent of such persons to become citizens and residents of this State shall date from the day on which such registry shall be so entered in such record book by the clerk of the circuit court for the county, or of the superior court of Baltimore city, as the case may be, into which county or city such person shall so remove from any other State, district or Territory. And no person coming into this State from any other State, district or Territory, shall

be entitled to registration as a legal voter of this State until one
7 year after his intent to become such legal voter shall be thus evidenced by such entry in such record book, and such entry or a duly certified copy thereof shall be the only competent and admissible evidence of such intent. And the clerk of the superior court of Baltimore city and the several courts of the several counties shall immediately, upon the passage of this act, procure a suitable record book for the recording therein of such entries arranged alphabetically under the names of such persons. For every person so registered, under the provisions of this section, they shall be entitled to demand and receive the sum of twenty-five cents, to be paid to said clerks by the mayor and city council of Baltimore and the county commissioners, respectively. A copy of such record, duly certified by said clerks, shall be evidence of the right of such person to registration as legal voters according to law, and each person so registered shall be entitled to such certified copy upon demand without charge."

8 In his petition filed in the circuit court of Montgomery county Maryland, (as well as on the arguments in the State courts) petitioner expressly assailed the validity of the above act, as being repugnant to stated implied guarantees and stated specific provisions of the Constitution of the United States, and a right and privilege (to wit, the status of resident and citizen of Maryland) was specially set up and claimed under the first section of the fourteenth amendment to the Constitution of the United States. The decision of the court of appeals of Maryland, which is complained of, was in favor of the validity of said statute and was against the right and privilege specially set up and claimed as aforesaid. The errors committed by said decision are set out with more particularity in the assignment of errors herewith presented.

9 Wherefore petitioner prays that a writ of error may be allowed in this behalf to the Supreme Court of the United States for the correction of the errors complained of, that the bond herewith submitted may be duly approved, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be ordered sent to the said Supreme Court of the United States.

Dated, Washington, D. C., November 2nd, 1903.

WM. H. POPE, *Petitioner.*

10 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the court of appeals of the State of Maryland, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals before you, or some of you, the highest court of law or equity of the said State in which a decision could be had in the said suit between William H. Pope, appellant, and John M. C. Williams and *and* John W. Harper, officers of registration, constituting the board of registry for election district No. 7 of Montgomery county, Maryland, appellees, wh rein was drawn in question the validity of a treaty
11 or statute of, or an *an* authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of a commission held under the United States, and the decision was against the title, rights, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said William H. Pope as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full — speedy justice done to the parties aforesaid in this behalf, do command you, if judg-
12 ment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the third day of November, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
MELVILLE W. FULLER,
Chief Justice of the United States.

Filed November 4th, 1903.

13 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To John M. C. Williams and John W. Harper, office of registration, constituting the board of registry for election district No. 7 of Montgomery county, Maryland, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the court of appeals of the State of Maryland, wherein William H. Pope is plaintiff in error, and you are defendants in error, to show cause, if any there by, why the judgment ren-
14 dered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States this third day of November, in the year of our Lord one thous- nine hundred and three.

MELVILLE W. FULLER,
Chief Justice of the United States.

CITY OF WASHINGTON, *District of Columbia,* } *ss:*

On this eleventh day of November in the year of our Lord one thousand nine hundred and three, personally appeared William H. Pope, before me, the subscriber, Horace H. Westcott a notary public in and for the District of Columbia and makes oath that he
15 delivered a true copy of the within citation to John M. C. Williams and John W. Harper, on November 3rd, 1903, at Bethesda, in Montgomery county, Maryland.

WM. H. POPE.

Sworn to and subscribed the 11th day of November A. D. 1903.

[Seal of Horace H. Westcott, Notary Public for the District of Columbia.]

HORACE H. WESTCOTT,
Notary Public.

Fee paid by Wm. H. Pope. November 11—1903. 25c.
Filed Nov. 12th, 1903.

16 *Assignment of Errors.*

Assignment of errors (on application for allowance of writ of error from the Supreme Court of the United States), Wm. H. Pope, pl'ff in error.

Filed November 3rd, 1903.

In the Court of Appeals of Maryland.

WILLIAM H. POPE
vs.
JOHN M. C. WILLIAMS and JOHN W. HARPER, as the Board of Registry of Election District No. 7 of Montgomery County, Maryland.

Assignment of errors.

(Filed on application for allowance of writ of error from the Supreme Court of the United States.)

17 Now comes William H. Pope, the appellant above named, and for the purpose of having the decision and judgment of the court of appeals of Maryland in the above cause, reviewed upon writ of error from the Supreme Court of the United States, presents the following assignment of errors:

The court of appeals of Maryland erred in the decision and judgment rendered by it in the following particulars:

I.

In affirming, instead of reversing with directions, the order and judgment of the circuit court of Montgomery county, Maryland.

II.

In holding and deciding that act of the legislature of Maryland assailed in the above cause was a valid statute and was not
18 repugnant to fundamental and inalienable rights of citizens of the United States and to implied guarantees of the Constitution of the United States, whereby every citizen of the United States is entitled to remove into any State of the Union without being subjected, (because of removal after a particular date from another State, or from a district or Territory of the United States,) to the performance of offensive, vexatious and oppressive conditions as a prerequisite to the acquisition and enjoyment of civil rights and privileges.

III.

In holding and deciding that the act complained of was a valid statute, and did not operate an unjust discrimination against citizens

of the United States removing into Maryland after March 29th, 1902, and was not repugnant to that provision of the first section of
19 the fourteenth amendment to the Constitution of the United States which forbids a State to deny to any person within its jurisdiction the equal protection of the laws.

IV.

In holding and deciding that the law complained of was a valid statute, that it did not abridge or deny a right and privilege derived from the Constitution of the United States (to-wit, the status of resident an- citizen of Maryland), and that it was not repugnant to that portion of the first section of the fourteenth amendment to the Constitution of the United States, which declares that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

20 Wherefore, because of the above recited errors, it is prayed that the decision and judgment of the court of appeals of Maryland, rendered in the above entitled cause, be reversed, with direction.

WM. H. POPE,
Plaintiff in Error.

21 STATE OF MARYLAND, *Montgomery County,* } *To wit:*

In the Circuit Court for Montgomery County.

At a circuit court begun and held at the court house in the town of Rockville, in and for said Montgomery county, on the first Monday of June, it being the first day of the same month, in the year nineteen hundred and three.

Were present: The Honorable James B. Henderson, associate judge; John W. Collier, sheriff, and Thomas Dawson, clerk.

In the record of proceedings of said court among others were the following, viz:

On the 29th day of September, A. D. 1903, William H. Pope file- in court here the following petition, to-wit:

Petition to Revise Action of Board of Registry.

In the Circuit Court for Montgomery County.

WILLIAM H. POPE, Petitioner, *vs.* JOHN M. C. WILLIAMS and JOHN W. HARPER, Officers of Registration, Constituting the Board of Registry for Election District No. 7 of Montgomery County, Maryland, Respondents.	No. 442, Miscellaneous Petitions.

(Filed September 29th, 1903.)

To the honorable judges of said court:

The petition of William H. Pope respectfully shows:

Petitioner is forty-six years of age and upwards; was born
22 in the city of London, England; when less than a year old was brought by his parents to this country; he has ever since resided in the United States; and the father of petitioner became a naturalized citizen of the United States when petitioner was under the age of twenty one years, by reason whereof petitioner has been for many years a naturalized citizen of the United States.

On June 7, 1902, petitioner, with his wife and child, removed from the city of Washington, District of Columbia, into Montgomery county, in the State of Maryland, having then had and ever since and now having the intention of making the State of Maryland the permanent domicil of himself and his family and of becoming a citizen of said State; and ever since said June 7, 1902, petitioner has resided in the subdivision of Otterbourne, near Chevy Chase, in said Montgomery county, and in the seventh election district of said county.

Your petitioner further states that the respondents John M. C. Williams and John W. Harper are the duly appointed and qualified officers of registration, constituting the board of registry, for the aforesaid election district No. 7, of Montgomery county, Maryland; and, on September 29, 1903, commencing at the hour of eight o'clock in the morning, began a sitting at "Wilson's store, at Bethesda, in said county," for the purpose, among other things, of registering in the registry of voters of said election district "all persons who possess or will before the day of election next ensuing possess the requisite qualifications under the constitution of the State of Maryland and the laws made thereunder, entitling them to vote in said election district." At said sitting, petitioner made application to said board of registry to be entered as a qualified voter on the register of registries of voters of said election district, then and there

in the custody of said board. Said board, however, refused and declined to comply with said request, and assigned as the sole reason for such refusal that your petitioner did not, as required by section 25 B, of article 33, of the Code of Public General Laws of Maryland, (chapter 133, Laws 1902, page 204,) produce an exhibit to said board, as evidence of the intention of your petitioner to become a legal voter, an original entry, made one year prior to such application for registration as a voter, in a record book kept by the clerk of Montgomery county, Maryland, registering the intention of your petitioner to become a citizen and resident of Maryland, or a duly certified copy of said original entry.

Your petitioner admits that he did not within a year prior to said application for registration as a qualified voter, or at any time during the year 1902, in any manner, make or register, in the
23 office of or before the clerk of Montgomery county, Maryland, or in a record book kept by said clerk, a declaration of intention to become a citizen and resident of Maryland, such as is required by the aforesaid law to be made by persons who remove into the State of Maryland after March 29th, 1902, as a condition precedent to subsequent registration of such persons as qualified voters. Petitioner, however, claims and asserts that said section 25 B, of article 33, of the Code of Public General Laws of Maryland affords no justification for the said refusal to register your petitioner as a qualified voter, because said alleged law contravenes and is repugnant to the Constitution of the United States and the constitution of the State of Maryland, and is, therefore, null and void.

As grounds supporting the claim of the nullity of said law, petitioner states the following:

1. Said law, in substance, declares that, as respects the acquisition of the right to vote, no male citizen of the United States of the age of twenty-one years and upwards who may remove into the State of Maryland after March 29, 1902, with the intention of making said State his permanent domicil shall be deemed a citizen and resident of Maryland until he shall have made the declaration of intention required by said law—that is, has been duly naturalized as a citizen of Maryland; whereas, by necessary legal effect, section 1 of article I of the constitution of Maryland, declares that such a person on removing into Maryland with the intention aforesaid shall *ipso facto* become a citizen and resident of Maryland for all purposes.

2. Said law requires the existence of an intention to become a citizen and voter in a person removing into Maryland after March 29, 1902, as a qualification to registration as a qualified voter, and thereby adds a qualification additional to those prescribed in the constitution of Maryland, which is without the power of the legislature.

3. Said law as to the class aforesaid alters the constitutional requirement contained in section 1, of article I of the constitution of Maryland as to the period of time a citizen of Maryland shall reside

in the State in order to entitle him to become a voter, from one year to one year *after the making of the record declaration of intent to become a citizen and resident of Maryland required by said law.*

4. Said law is repugnant to the provision of section 5 of article I of the constitution of Maryland—which declares that "the General Assembly shall provide by law for a uniform registration of the names of all the voters in this State who possess the qualifications prescribed in this article"—because said law as to the class aforesaid adds to the qualifications for voting prescribed in article I
24 of the constitution of Maryland, and the provisions of said law are not directed to ascertaining when an applicant for registration who removed into Maryland after March 29, 1902, in fact became a citizen and resident of Maryland and possessed of the qualifications prescribed by the constitution of Maryland but arbitrarily prohibits any inquiry or investigation into the fact as to whether said applicant formed the intention to make the State of Maryland his permanent home before the date of the making of the record entry of intent required by said law.

5. Said law is also repugnant to the clauses of section 1 and section 5 of the constitution of Maryland, heretofore referred to, because, as a condition of permitting the class of persons heretofore referred to to become voters, said law imposes onerous and unreasonable burdens upon said persons, by compelling them to undergo the trouble, expense and loss of time consequent upon a visit to the county seat to declare and register their intention and requires them to preserve and exhibit to the officers of registration written evidence of such declararation of intent, and further compels those of said class who have already become citizens of Maryland by virtue of the Constitution of the United States and of Maryland, and who of necessity are residents of Maryland to stultify themselves and utter a falsehood by requiring them to declare that they intend *to become* such citizens and residents, thus impliedly declaring that they are not yet citizens and residents of the State. All which onerous and burdensome requirements, instead of facilitating the acquisition of the electoral franchise by those entitled to the same tends to impede, hinder and deter such individuals from attempting to acquire and avail of the right and operates an undue discrimination against the class of persons affected by said law.

6. Said law is repugnant to that portion of section 1 of the fourteenth amendment of the Constitution of the United States,—which declares that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, *and of the State wherein they reside*,"—because by said law it is in effect ordained that male citizens of the United States, of the age of twenty-one years and upwards, removing into the State of Maryland after March 29, 1902, with the intention of making said State their permanent domicil, shall not be treated as citizens or residents of Maryland, or given the rights and privileges of citizens

of Maryland, until they have been naturalized in the mode prescribed by said law.

7. Said law is also repugnant to that portion of section 1 of said fourteenth amendment to the Constitution of the United States which prohibits a State from denying any person within its
25 jurisdiction the equal protection of the laws,—because said law operates an unjust and unreasonable discrimination against citizens of the United States coming into the State of Maryland to permanently reside therein, after March 29, 1902, who may desire to become qualified voters therein.

8. Said law is also repugnant to the general spirit of the Constitution of the United States and the fundamental rights of citizens of the United States, which deny to a State the power to attach unreasonable or burdensome conditions to the free movement of citizens of the United States out of, into, and settlement within the confines of any State, district or Territory within the United States.

Your petitioner, therefore, respectfully prays this honorable court to revise the aforesaid action of said board of registry, and to order and direct that the name of your petitioner be entered as a qualified voter on the registry or registries of voters of election district No. 7, of Montgomery county, Maryland.

WILLIAM H. POPE, *Petitioner.*

(Filed Sept. 29, '03.)

TOWN OF ROCKVILLE, *County of Montgomery,* } ss:

William H. Pope, the petitioner above named, being duly sworn, deposes and says that the statements made in the foregoing petition by him subscribed are true.

WILLIAM H. POPE.

Subscribed and sworn to before me this 29th day of September, 1903.

THOMAS DAWSON,
Clerk of the Circuit Court for Montgomery Co.

(Filed Sept. 29, 1903.)

26 In the Circuit Court for Montgomery County.

WILLIAM H. POPE vs. JOHN M. C. WILLIAMS, JOHN W. HARPER, Officers of Registration, &c.	No. 442, Miscellaneous Petitions.

Ordered, this 30th day of September, in the year 1903, by the circuit court for Montgomery county and by authority thereof, that the foregoing petition be and the same is set down for hearing on

the 3rd day of October, A. D., 1903, at the hour of 10 o'clock, a. m., and that the clerk of this court be and he is hereby directed to issue a summons for John M. C. Williams and John W. Harper the board of registry for the 7th election district of said Montgomery county, requiring them and each of them to attend at said hearing in person or by counsel.

JAMES B. HENDERSON,
Judge of the Circuit Court.

(Filed Sept. 30, 1903.)

1903, October 7th—General demurrer.
1903, October 7th—Demurrer sustained.
1903, October 7th—Judgment that the petition be dismissed with costs to the defendants.
1903, October 7th—Line to enter appeal to the court of appeals and order to make and forward transcript of record filed.

In the Circuit Court for Montgomery County.

WILLIAM H. POPE, Petitioner,
vs.
JOHN M. C. WILLIAMS ET AL., at the Board of Registry of Election District No. 7.
} No. 442, Miscellaneous Petitions.

Thomas Dawson, Esq., clerk of court:

27 Enter an appeal from the judgment herein to the court of appeals, and make out and transmit a transcript of the record of the proceedings in this case to the clerk of said court.

WM. H. POPE,
Petitioner, Pro Se.

Dated October 7, 1903.

BOWIE F. WATERS,
ROBERT B. PETER,
For Board of Registry.
WILLIAM H. POPE,
For Petitioner.

STATE OF MARYLAND, *Montgomery County,* } *To-wit:*

I, hereby certify, that the aforegoing is a true and correct copy of the proceedings in the case of William H. Pope vs. John M. C. Williams, and John W. Harper, officers of registration, etc., for 7th election district of Montgomery county, it being No. 442 miscellaneous petitions, in the circuit court for Montgomery county.

(Seal's place.) In testimony whereof, I have hereto set my hand and affixed the seal of the circuit court for Montgomery county, this 7th day of October, A. D. 1903.

THOMAS DAWSON,
Clerk of the Circuit Court for Montgomery County.

And afterwards to wit on the 22nd day of October, 1903 the following judgment was made by said court and entered of record, to wit:

WILLIAM H. POPE
vs.
JOHN M. C. WILLIAMS and JOHN W. HARPER, Officers of Registration Constituting the Board of Registry for Election District No. 7 of Montgomery County, Maryland.

This cause came on to be heard, was taken up and arged by counsel, on consideration whereof the — finds there is no error apparent
on the record in the proceedings and judgment of the circuit
28 court for Montgomery county. It is therefore considered by
the court that the said judgment be, and the same hereby is affirmed and that the appellee- recover of the appellant their costs and charges in this court and in the court below, and that execution issue accordingly.

THOMAS PARRAN,
Clerk Court of Appeals of Maryland.

And afterwards to wit, on the 3rd day of December, 1903, the court of appeals of Maryland filed its opinion in words and figures following to wit.

29 In the Court of Appeals of Maryland.

WILLIAM H. POPE
vs.
JOHN M. C. WILLIAMS, JOHN W. HARPER, ET AL. } No. 85, O. D.

Full bench except Chief Judge McSherry.

Opinion by Page, J.

Filed Dec. 3. 1903.

30 William H. Pope, the appellant, was born in the city of London, and was brought by his parents, when less than a year old to the United States, where he has resided ever since. Before he had reached the age of twenty-one years, his father became a naturalized citizen, by reason whereof he has been for many years a naturalized citizen of the United States.

On 7 June 1902, the petitioner with his wife and child removed from the District of Columbia into Montgomery county in this State, and has since resided there, having at the time of his removal and ever since, the intention of making that place his permanent domicile, and of becoming a citizen of the State of Maryland.

31 On 29th September 1903, he applied for registration to the board of registration of the election district in Montgomery county, in which he resided, to be registered as a qualified voter; but the board refused to comply with his request, for the sole reason that he did not produce to them, as evidence of his intention to become a legal voter, an entry of his intention, made one year prior to his application in a record book kept by the clerk of Montgomery county, or a duly certified copy of said original entry, as required by section 25 B of article 33 Code of Public General Laws; (being chapter 133 of the Acts of 1902).

The petitioner admits he has not complied with the provisions of that statute, in that he did not make or register a declaration of his intention to become a citizen and resident of the State, as re-

32 qu-red by its provisions; but contend- that these provisions contravene the Constitutions of the State of Maryland and of the United States and are therefore null and void. For that reason he has filed his petition to the lower court, praying it to revise the action of the board of registry, and to order his name to be entered on the registry of voters, &c.

On demurrer a judgment was entered dismissing the petition and the petitioner has applied to this court.

As preliminary to what may hereafter be advanced in this opinion, it may be stated that this court has more than once, decided, that by the constitution of this State, the qualifications of a voter, are, that he shall be a citizen of the United States of the age of twenty-one years or upwards, who has been a resident of the State for one year and of the legislative district of Baltimore

33 city or of the county in which he may offer to vote, for six months preceding the election; that he must be registered before he can exercise his right to vote, that the legislature of the State may regulate the method of registration by establishing an uniform system of registration in which the several steps to be taken by the applicant shall be prescribed, and the kind of evidence by which his right to be registered shall be established; provided however, that under the pretence of regulating such procedure, no person can be precluded or hindered from the *the* complete enjoyment of his rights, as guaranteed to him by the Constitution of the State or of the United States. These princi*princi*ples are well established, and we do not understand them to be controverted in this case.

It may also be advisable, to state with some precision, what kind of residence it is, that will entitle a person to vote in this

34 State. He must be a citizen of the United States; but that *above* does not make him a citizen of the State of Maryland.

A person residing within the District of Columbia or in one of the Territories, is a citizen of the United States, but not of any one of the States; though it is true that one who is a citizen of a State is also a citizen of the United States.

Slaughter House cases 83 U. S.—36–130—

To become a citizen of the State, a person must reside therein, and to entitle him to the franchise he must have resided within the State at least one year & in a district six months before the election. The meare abiding in a place within the State, is not sufficient. He must "reside" there, within the meaning of — word as employed in the Constitution; and that *is* seems to be entirely clear under all the decisions, within State and elsewhere. In Mitchell *vs.* M. S. 21
35 Wallace 138, the Supreme Court said domicil is "a residence at a particular place accompanied with positive or presumptive proof of an intention to remain there for an unlimited time;" and this court in Thomas *vs.* Warner 83 Md. 20, also said, "The idea of residence is compounded of fact and intention; to effect a change of it, there must be an actual removal to another habitation, and there must be an intention of remaining there." In view of these authorities, which could be greatly multiplied, it requires no citation of cases to show, that whenever it is proposed to establish a change of residence, it is incumbent upon the party to establish by proper testimony 1st. an actual removal to another habitation and 2nd that he has the intention of remaining there. To establish the second of these propositions is sometimes difficult, and indeed impossible by clear and unambiguous evidence. Facts often exist & are proven, from which may reasonably be drawn conclusions,
36 either that he had or had not the intention to change his legal residence. To meet this difficulty and to furnish some rule, by which safer conclusion could be arrived at, it has sometimes been laid down, that to establish a change of residence, it showed at least be made to appear that the former residence has been abandoned; or *or* that the family has become seteled in the new residence and made it the centre of the family affairs. The statute we are considerining is an effort to supply another rule of evidence and in the judgment of the legislature presumably, a safer one, for solving the question of the intention of the party, in cases where he has recently moved into the State. The proof of intent in such a case, after the passage of the act, must be the record of his declaration of intent, to be made as provided in the act, and no presumptions of such intent can be otherwise proved. It provides that no person coming into the State after the passage of the act, can be
37 registered as a legal voter, until one year after his intent to become such shall be evidence- by the entry in the record book of the clerk of the county or by a certified copy thereof. The right to become a registered voter under such proof, dates from the time of the registration of the intent in the record book of the clerk, and therefore if the intent be registered less than a year be-

fore the sitting of the register of voters, but more than one year before the next election, he would be entitled to be registered as a voter of *the of* that election. The record of the declaration of intent, would show that he is entitled to be a legal voter at the time under the Constitution; and under the provisions of sec. 16 of article 33, it would be the duty of the register to so enter his name. The words, "No person coming into this State from any other State, &c. shall be entitled to registration as a legal voter of this State until one year after his in-
38 tent to become a legal voter shall be thus evidenced by such entry &c." must be construed in connection with other portions of the law governing registration; and therefore it seems to be plain that when the proof according to the legal requirement, shows that the party is entitled to vote at the next election, the board of registration cannot refuse to place his name on the registration book, so that he may vote at the next election.

We do not think this requirement is unreasonable, or hinders or deters any one from acquiring — exercising his right to vote. It is merely that persons removing into the State shall indicate their intent to become citizens & residents in the record book. No fee is chargeable against them for so doing, and none for obtaining a certified copy thereof. The entire burden is to so register, with their names, residence age and occupation. Such require-
39 ment surely cannot be regarded as unreasonable or as, in any respect imposing a burdensome or offensive condition.

Nor does the statute impose qualifications for voting, other than those prescribed by the Constitution. It leaves those qualifications precisely as they — before. It deals exclusively with the evidence necessary to establish residence, by providing what the evidence of residence shall be. This court has so recently discussed the principles applicably to a case of this kind, in Southerland vs. Norris 74 Md. 331, that, no further discussion respecting them is needed here. In that case the court had under consideration, statute that provided that all persons whose names were on the registration list, who had removed at the date of the passage of the act from the State and taken up a domicile beyond the limits of the State should be presumed to have thereby intended to abandon their residence in the State, unless within thirty days after the passage of the act,
40 they should go in person before the clerk of the court and make affidavit that when they so removed they did not intend to change their residence. By the act now in question all persons coming into the State must make the declaration of their intent to become citizens & residents of the State. It is impossible to perceive any difference in principle between the two acts, further than, that the one refers to the case of persons going out — the State, while the other applies to the case of those coming in. Neither of these acts changes the qualification of voters as provided by the Constitution and both establish a rule of evidence, by which in the one case the intention of a person leaving the State may be

ascertained, and in the other the intention of a person coming into the State. After a careful and exhaustive examination the court in Southerland case sustained the validity of the law, with respect to persons leaving the State, holding that the new rule of
41 evidence therein established violated no vested right, and imposed no unreasonable condition, so as to render the statute either oppressive or invalid.

The principles established by that case, we think are applicable to the facts of this case.

But it is also contended, that the obligation imposed by the act on persons removing into the State of the 29th day of March 1902, to make the declaration of intent, operates to impair the right of citizenship conferred by the Constitution of the United States.

The contention is, that since the adoption of the 14th amendment, the status of citizenship of a State, is dependent on the Constitution of the United States, in that, by that amendment the words "resident of a State," and "citizen of a State" are equivalent terms, "as applied to citizens of the United States," and that the act under consideration, by declaring in effect that the status of the declarant
42 shall be determined as of the date of making the declaration, refuse to give effect to a prior acquired status derived from the Constitution of the United States, and thereby abridges the "privileges or immunities" of citizens of the United States, and denies to them "the equal protection of the laws." We have already pointed out that the act does not discriminate against any person or class of persons, but merely establishes a rule of evidence, in respect to the intention of a person coming into the State. To constitute residence, within the meaning of our laws regulating the elective franchise, as well as of the fourteenth amendment, an actual abode within the State, as well as the intention of remaining must concur.

Anderderson *vs.* Watt 138 U. S. 702
Mitchell *vs.* U. S. (*supra*)
Thomas *vs.* Warner 83 Md. R. 20

43 The rule of evidence thus established, does not change the character of the residence as it existed prior to the passage of the act, but merely goes to the ascertainment of one of the constituent elements, theretofore necessary for the ascertainment of the question of residence. Moreover it is now well settled by the adjudications of the Supreme Court of the United States, that the fourteenth amendment did not add the "right of suffrage to the privilege and immunities of citizenship," and that the Constitution of the United States does not confer the right of suffrage upon any one.

Minor *vs.* Hoppersett 21 Wall. 162–178—

The scope of the series of constitutional provisions of which the fourteenth amendment is one, was clearly stated in the case of Strander *vs.* West Virginia 100 U. S. 303–312

There the court after referring to the Slaughter House cases
44 (16 Wall. 36), said, "The existence of laws in the State where the newly ema-cipated negro resided which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied, and by it (the 14th amendment) such laws were forbidden--We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class will ever be held to come within the purview of this provision." It can certainly not be contended in this case, that this act discriminates in any manner against negroes or any other class; its provisions apply to "all persons" of every class. The 14th amendment recognizes that citizens of the United States coming into the State with intent to remain, are citizens of the State; but it does not confer on them the right to vote in the State; nor deny to the State the right to declare the term- and conditions upon which its citizens may vote, provided however (under the 15th amendment) the right of citizens of the United States to vote, shall not
45 be denied or abridged on account of race, color or provi-s condition of servitude.

United States *vs.* Reese 92 U. S. 214–256.

We are therefore of the opinion the provisions of the law are not repugnant to the Constitution of the United States or of the State of Maryland.

The order of the lower court must be affirmed. Order affirmed. With costs to the app-lee—

Filed Dec. 3, 1903.

46 *Bond.*

Know all men by these presents, that we, William H. Pope, as principal, and James A. Finch as surety are held and firmly bound unto John M. C. Williams and John W. Harper in the full and just sum of two hundred and fifty dollars to be paid to the said John M. C. Williams and John W. Harper, their certain attorney, executors, administrators, or assigns: to w-ich payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this second day of November, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a term of the court of appeals of the State of Maryland, in a suit depending in said court between said
47 William H. Pope, the principal obligor herein, and said John M. C. Williams and John W. Harper, as the board of registry of election district No. 7, in Montgomery county, Maryland, a judgment was rendered against the said William H. Pope, and the said Pope having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the afore-

said suit, and a citation directed to the said Williams and Harper, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington within 30 days from the date thereof.

Now, the condition of the above obligation is such, that if the said William H. Pope shall prosecute said writ of error to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

[L. S.]
48 WM. H. POPE. [SEAL.]
[L. S.]
JAMES A. FINCH. [SEAL.]

Sealed and delivered in presence of—

LUKE C. DILLON.
E. V. DUNSTAN.

Approved by—

MELVILLE W. FULLER,
Chief Justice of the United States.

Filed Nov. 4th, 1903.

49 STATE OF MARYLAND, *set:*

I Thomas Parran clerk of the court of appeals of Maryland do hereby certify that the foregoing record is a true transcript of the record and proceedings in the case of William H. Pope *vs.* John M. C. Williams and John W. Harper, officers of registration, &c., as the same remains, on file in the clerk's, office of the said court of appeals.

And I do further certify that the said court of appeals is the highest court of law or equity in said State in which a decision can be had in said case.

Seal Court of Appeals of Maryland.

In testimony whereof, I have hereunto set my hand as clerk, and affixed the seal of the said court of appeals, this fifth day of December, A. D. 1903.

THOMAS PARRAN,
Clerk Court of Appeals of Maryland.

Endorsed on cover: File No. 19,154. Maryland court of appeals. Term No. 503. William H. Pope, plaintiff in error, *vs.* John M. C. Williams and John W. Harper, officers of registration, constituting the board of registry for election district No. 7, of Montgomery county, Maryland. Filed December 7", 1903. File No. 19,154.

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JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

October Term, 1903.

WILLIAM H. POPE, Plaintiff in Error,
vs.
JOHN M. C. WILLIAMS and JOHN W. HARPER, as the Board of Registry of Election District No. 7, of Montgomery County, Maryland, Defendants in Error.

No. 503.

In Error to the Court of Appeals of Maryland.

MOTION TO ADVANCE.

Now comes William H. Pope, plaintiff in error, and moves the court to advance the above case on the docket and to set down said case for hearing at an early date.

THE MATTER INVOLVED is the determination of the question whether or not, in view of the provisions of the Fourteenth Amendment to the Constitution of the United States, the State of Maryland may lawfully refuse to recognize as residents and citizens of Maryland adult male citizens of the United States who, since March 29, 1902, removed into Maryland, and immediately upon such removal became legally domiciled therein, and those who may hereafter remove into said State, and immediately upon removal become legally domiciled therein, and may deny to such persons an equality of rights with other residents and citizens of Maryland until they have per-

formed onerous and and oppressive conditions and become naturalized as residents and citizens of Maryland, as provided in an act of the Legislature of Maryland, approved March 29, 1902, a copy of which act is hereto annexed marked Exhibit A. Plaintiff in error, an adult citizen of the United States, removed from the District of Columbia into Montgomery County, Maryland, on June 7, 1902, and immediately became legally domiciled in said State, and the Constitution of Maryland required but a residence of one year in the State to entitle plaintiff in error to be registered as a qualified voter of the State; yet the defendants in error, on September 29, 1903, solely because of non-compliance by plaintiff in error with the provisions of the statute just referred to, declined to recognize him as a resident and citizen of Maryland, and refused to register him as a duly qualified voter of that State. The Court of Appeals of Maryland affirmed such action of the defendants in error, and that judgment is sought to be reversed through the writ of error sued out in this case.

The REASONS FOR THIS APPLICATION are that the enforcement of the statute referred to operates a disfranchisement of plaintiff in error and others similarly situated who have not complied with said statute, whether from ignorance of its existence, from physical, business or pecuniary inability to attend at the county seat or unwillingness to make the declaration required or to recognize the validity of said statute by producing the evidence required to be furnished to the board of registry; and if this case is not advanced for hearing, a decision cannot be rendered in time, if said law is declared to be invalid, to enable plaintiff in error and others similarly situated to avail of the right to vote at the national and State elections to be held in Maryland in the fall of 1904.

WM. H. POPE,
Plaintiff in Error, pro se.

EXHIBIT A, REFERRED TO IN FOREGOING MOTION.

[Laws of Md. 1902, ch. 133, p. 204.]

SECTION 25*b*. All persons who after the passage of this Act shall remove into any county of this State or into the City of Baltimore from any other State, District or Territory, shall indicate their intent to become citizens and residents of this State by registering their names in a suitable record book, to be procured and kept for the purpose by the Clerk of the Circuit Court for the several counties, and by the Clerk of the Superior Court of Baltimore City; such record to contain their names, residence, age and occupation; and the intent of such persons to become citizens and residents of this State shall date from the day on which such registry shall be so entered in such record book by the Clerk of the Circuit Court for the county, or of the Superior Court of Baltimore City, as the case may be, into which county or city such person shall so remove from any other State, District or Territory. And no person coming into this State from any other State, District or Territory shall be entitled to registration as a legal voter of this State until one year after his intent to become such legal voter shall be thus evidenced by such entry in such record book, and such entry or a duly certified copy thereof shall be the only competent and admissible evidence of such intent. And the Clerk of the Superior Court of Baltimore City and of the several courts of the several counties shall immediately, upon the passage of this Act, procure a suitable record book for the recording therein of such entries, arranged alphabetically under the names of such persons. For every person so registered under the provisions of this section they shall be entitled to demand and receive the sum of twenty-five cents, to be paid to said clerks by the Mayor and City Council of Baltimore and the County Commissioners respectively. A copy of such record duly certified by said clerk shall be evidence of the right of such person to registration as legal voters according to law, and each person so registered shall be entitled to such certified copy upon demand without charge.

Supreme Court of the United States.

WILLIAM H. POPE, Plaintiff in Error, vs. JOHN M. C. WILLIAMS et al., Defendants in Error.	OCT. TERM, 1903. No. 503.

To JOHN P. POE, Esq.,
Attorney for Defendants in Error.

SIR: Please take notice that on Monday, January 4, 1904, at the opening of the court, or as soon thereafter as counsel can be heard, the motion, of which a copy is herewith served upon you, will be submitted to the Supreme Court of the United States for the decision of said court thereon.

Dated, Washington, December 10, 1903.

WM. H. POPE,
Plaintiff in Error, pro se.

Service at Baltimore, Md., admitted this 10th day of December, 1903.

John P. Poe,
Attorney for Defendants in Error.

Supreme Court of the United States.

October Term, 1904.

William H. Pope, Plaintiff in Error,
vs.
James M. C. Williams and James W. Hopkins, as the Board of Registry of Election District No. 7 of Montgomery County, Maryland, Defendants in Error.

In error to the Court of Appeals of the State of Maryland.

BRIEF FOR PLAINTIFF IN ERROR.

WM. H. POPE,
Plaintiff in Error, pro se.

Supreme Court of the United States.

No. 503.—October Term, 1903.

WILLIAM H. POPE, Plaintiff in Error,
vs.
JOHN M. C. WILLIAMS AND JOHN W. HARPER, as the Board of Registry of Election District No. 7, of Montgomery County, Maryland, Defendants in Error.

In error to the Court of Appeals of the State of Maryland.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of the Case.

The question at issue is the validity, as respects the Constitution of the United States, of a law of the State of Maryland, approved March 29, 1902, which the plaintiff in error claims abridged the right and privilege of Maryland citizenship acquired by him subsequent to the passage of the act. The statute is contained in Laws of Md., 1902, ch. 133, p. 204, and was enacted as a part of Article 33 of the Code of Public General Laws of Maryland, title, "Elections," sub-title, "Registration."

It reads as follows (italicizing mine—W. H. P.):

"SECTION 25*b*. All persons who after the passage of this act shall remove into any county of this State or into the City of Baltimore from any other State, District or Territory, shall indicate their intent to become citizens and

residents of this State by registering their names in a suitable record book, to be procured and kept for the purpose by the Clerk of the Circuit Court for the several counties, and by the Clerk of the Superior Court of Baltimore City; such record to contain their names, residence, age and occupation; *and the intent of such persons to become citizens and residents of this State shall date from the day on which such registry shall be so entered* in such record book by the Clerk of the Circuit Court for the county, or of the Superior Court of Baltimore City, as the case may be, into which county or city such person shall so remove from any other State, District or Territory. *And no person coming into this State from any other State, District or Territory shall be entitled to registration as a legal voter of this State until one year after his intent to become such legal voter shall be thus evidenced* by such entry in such record book, *and such entry or a duly certified copy thereof shall be the only competent and admissible evidence of such intent.* And the Clerk of the Superior Court of Baltimore City and of the several courts of the several counties shall immediately, upon the passage of this act, procure a suitable record book for the recording therein of such entries, arranged alphabetically under the names of such persons. For every person so registered under the provisions of this section they shall be entitled to demand and receive the sum of twenty-five cents, to be paid to said clerks by the Mayor and City Council of Baltimore and the County Commissioners respectively. A copy of such record duly certified by said clerk shall be evidence of the right of such person to registration as legal voters according to law, and each person so registered shall be entitled to such certified copy upon demand without charge."

On June 7, 1902, plaintiff in error was an adult male citizen of the United States, living in the District of Columbia. With his family he removed on said date into Montgomery County, Maryland, and has ever since resided there. The Constitution of Maryland, then and ever since in force, provided for manhood suffrage, and conferred the electoral franchise upon adult male citizens of the United States, *after a residence of one year in the State.* It also empowered the General Assembly of Mary-

land to provide for the registration of voters having the qualifications prescribed in the Constitution of the State. (See Exhibit A, Appendix, *infra*.)

On September 29, 1903, plaintiff in error attended at the place of registration in his election precinct, before the defendants in error, as officers of registration constituting the board of registry for said precinct, and asked to be registered as a duly qualified voter of the State of Maryland. His request was refused, upon the ground that he could not be regarded as a resident and citizen of Maryland, because of non-production of the evidence prescribed by the act of March 29, 1902. Thereupon, as authorized by the State laws (Exhibit B, Appendix, *infra*), this proceeding was begun in the Circuit Court of Montgomery County, Maryland, to obtain a revision of the action of the defendants in error. In the petition was alleged facts which tended to establish the possession by plaintiff in error of the qualifications for voting mentioned in the Constitution of Maryland; non-observance of the requirements of the statute; and the refusal to register and the ground of such refusal were alleged. It was also averred that, for various assigned reasons (Rec. p. 9), the law in question was void because repugnant both to the Constitution of the State and the Constitution of the United States. A general demurrer was filed to the petition, which, after argument, was sustained. On appeal, the Court of Appeals of Maryland affirmed the order of the Circuit Court. (56 Atl. 543.) To reverse the judgment of affirmance, this writ of error was taken.

SPECIFICATION OF ERRORS.

The error asserted and intended to be urged is the following: The Court of Appeals of Maryland erred in affirming the judgment of the Circuit Court of Montgomery County, and in deciding that the law in question was valid, and

a. In holding that the statute was not repugnant to fundamental and inalienable rights of citizens of the United States and to implied guarantees of the Constitution of the United States, whereby every citizen of the United States is entitled to remove at will into any State, without being subjected, because of such removal, to the performance of offensive and burdensome conditions as a prerequisite to the acquisition and enjoyment of civil rights and privileges;

b. In holding that the statute did not operate an unjust discrimination against citizens of the United States removing into Maryland after March 29, 1902, and was not repugnant to that provision of the first section of the Fourteenth Amendment which forbids a State to deny to any person within its jurisdiction the equal protection of the laws; and

c. In holding that the statute did not abridge a right and privilege derived under the Constitution of the United States, viz., the status of State citizenship, and was not repugnant to that portion of the first section of the Fourteenth Amendment, which declares that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

BRIEF OF ARGUMENT.

It is to be borne in mind, in considering this argument, that the Federal question urged is not that the plaintiff in error was deprived by the statute in question of the right to vote, but is that the Federal privilege of Maryland citizenship was denied and abridged. And at the threshold of the discussion let us cursorily examine the statute. It is an extraordinary production. Supposedly framed and enacted under a constitutional authority to provide by law for the registration of those possessing the voting qualifications prescribed in the Constitution of Maryland, the statute yet, in general terms, requires "every

person" who may remove into Maryland after the passage of the act to declare *at the county seat* his intention "to become" a resident and citizen of Maryland. It does not affect persons who had removed into Maryland before the passage of the act, even though not registered as voters. No attempt is made to ascertain from the new arrival whether voting qualifications are possessed by him. All he need declare—*and that not under oath*—is his name, age, residence, occupation and his intention "to become" a citizen and resident of Maryland. The act manifestly is aimed at citizens of the United States (for none other can become voters in Maryland) and at those who have actually come into Maryland to live; yet nothing need be stated as to when or how, if at all, the declarant became a citizen of the United States or the date of his coming into the State. In substance, the statute prescribes a condition to the acquisition of the status of resident or citizen of Maryland, for the intent to become such is to date *from the time of the making of the declaration.*

It is also premised that there is no dispute that, but for the statute in question, it would have been the duty of the defendants in error to have recognized that the plaintiff in error was a resident and citizen of Maryland, and to have registered him as a duly qualified voter. (See first four paragraphs of the opinion of the State court—Rec. pp. 13 and 14, embodied in a single paragraph in the report in 56 Atl. 543.)

The error assigned as committed by the State court, may be resolved into three propositions, which I shall consider in their order. They are:

First. A privilege under the Constitution of the United States, if vested in plaintiff in error, being specially set up in the State court as invaded by the statute in question, and the statute being held to be valid, this court has jurisdiction, although the ultimate relief sought below was a privilege under the Constitution of the State.

Second. State citizenship is a privilege under the Con-

stitution of the United States and a privilege and immunity of a citizen of the United States, which cannot be abridged by a State.

Third. The statute in question oppressively burdened and abridged the privilege of Maryland citizenship which attached to the plaintiff in error on June 7, 1902, and was consequently invalid.

First Proposition.

A privilege under the Constitution of the United States, if vested in plaintiff in error, being specially set up in the State court as invaded by the statute in question, and the statute being held to be valid, this court has jurisdiction, although the ultimate relief sought below was a privilege under the Constitution and laws of the State.

I need only cite in support of this proposition *Boyd* v. *Thayer*, (143 U. S. 135.)

Second Proposition.

State citizenship is a privilege under the Constitution of the United States and a privilege and immunity of a citizen of the United States, which cannot be abridged by a State.

That the status of resident and citizen of a State is a privilege of a citizen of the United States, dependent upon the Constitution of the United States, was expressly declared in the Slaughter-House Cases, (16 Wall. 36,) the first case in which this court considered and construed the Fourteenth Amendment. The court, speaking through Mr. Justice Miller, said (pp. 72, 73, 79 and 80):

"The first section of the fourteenth article, to which our attention is more specially invited, opens with a definition of citizenship—not only citizenship of the United States, but citizenship of the States. No such definition was previously found in the Constitution, nor had any attempt been made to define it by act of Congress. * * *

"To establish a clear and comprehensive definition of citizenship which should declare what should constitute

citizenship of the United States, and also citizenship of a State, the first clause of the first section was framed.

"'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.' * * *

"We venture to suggest some (of the privileges and immunities of citizens of the United States which no State can abridge) which owe their existence to the Federal Government, its national character, its Constitution, or its laws. * * *

"One of these is well described in the case of *Crandall* v. *Nevada*, (6 Wallace, 36.) It is said to be the right of the citizen of this great country, protected by implied guarantees of its Constitution, 'to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all operations of foreign commerce are conducted, to the sub-treasuries, land offices, and courts of justice in the several States.' And quoting from the language of Chief Justice Taney in another case, it is said 'that *for all the great purposes for which the Federal Government* was established, we are one people, with one common country, *we are all citizens of the United States*;' and it is, as such citizens, that their rights are supported in this court in *Crandall* v. *Nevada*.

* * * "One of these privileges is conferred by the very article under consideration. It is that a citizen of the United States can, of his own volition, become a citizen of any State of the Union by a *bona fide* residence therein, with the same rights as other citizens of that State."

In *Boyd* v. *Thayer*, *supra*, after noticing the decision in the Slaughter-House Cases, it was said by Chief Justice Fuller, speaking for the court, that the Fourteenth Amendment embodied the view expressed by Chief Justice Marshall in *Gassies* v. *Ballou*, (6 Pet. 761, 762,) that "A citizen of the United States residing in any State of the Union, is a citizen of that State." And in *Morris* v. *Gilmer*, (129 U. S. 315,) in considering the question of the domicil of

Gilmer for the purpose of determining his right to sue in a court of the United States, it was said (italicizing mine —W. H. P., p. 328):

"It is true, as contended by the defendant, that a citizen of the United States can *instantly* transfer his citizenship from one State to another (*Cooper* v. *Galbraith*, 3 Wash. C. C. 546, 554.) * * *"

That a Federal privilege of the character now being considered cannot be abridged by a State is expressly declared in the same section of the Fourteenth Amendment which defines citizenship of the United States and of a State, in the command that a State shall not "make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." It would manifestly be against public policy to permit a State, by indirection, to annul a privilege derived under the Constitution of the United States and require an acceptance of a similar privilege under a State law, with the waiver of benefits theretofore attached to a status resulting from the attaching of the privilege. The case is within the principle of the decision in *Barron* v. *Burnside*, (121 U. S. 186, and cases cited.) Approved in *Southern Pacific Co.* v. *Denton*, (121 U. S. 186;) *Barrow Steamship Company* v. *Kane*, (170 U. S. 111;) and *Blake* v. *McClung*, (172 U. S. 256.) And see *Dayton Coal & Iron Co.* v. *Barton*, (183 U. S. 23, 25;) *Cable* v. *United States Life Insurance Co.*, (191 U. S. pp. 306–307.) Further, the provision of the Fourteenth Amendment conferring the privilege of State citizenship upon citizens of the United States contains no definition of the term residence, nor does it prescribe the mode of proving such residence. What constituted residence was at that time determined by the principles of the common law and the application of the general rules of evidence, and, I submit, the presumption must be indulged that it was intended that when the fact of residence, in the sense of the Fourteenth Amendment, was at

issue in a court of justice, there should be no substantial variation from the mode of determining the fact as to residence which was in force when the Amendment was adopted. (*United States* v. *Wong Kim Ark*, 169 U. S. 654; *United States* v. *Palmer*, 3 Wheat. 630; *United States* v. *King*, 34 Fed. Rep. 306.)

Third Proposition.

The statute in question oppressively burdened and abridged the privilege of Maryland citizenship which attached to the plaintiff in error on June 7, 1902, and was consequently invalid.

The primary power and control of the State of Maryland over the electoral franchise in that State is not questioned. But, like all the powers of a State, it must be exercised in subordination to the Constitution of the United States; it must be exerted in a reasonable manner, so as not to abridge or nullify provisions of the Constitution of the United States, as is done when rights or privileges dependent upon that instrument are abridged or destroyed. For instance, it will not be asserted, I think, that the General Assembly of Maryland could lawfully enact a statute directly requiring male adult citizens of the United States removing into Maryland from another State after a particular date, who desire to become citizens of the State, to be naturalized in a court of the State, and prohibiting the judicial tribunals of the State and the executive officers from recognizing State citizenship, for any purpose, as attaching to that class unless acquired in the statutory mode. Yet this, I insist, is precisely what has been done, by indirection, in the statute here assailed. Suppose the following had been engrafted as a proviso on Section 1 of Article I of the Constitution of Maryland: "But no male citizen of the United States, of the age of twenty-one years or upwards, who may remove into Maryland after the date of the going into effect of this Constitution, shall be deemed a resident

of Maryland until he has registered before the clerk of the county in which he may reside a declaration of his intention to become a resident of Maryland." Would any doubt be entertained that this substantially required the NATURALIZATION of such a person and prescribed it as a qualification for the acquisition of the elective franchise? Certainly not. And this, I contend, is the precise import and effect of the act of March 29, 1902.

The right of the plaintiff in error, under the Constitution of the United States, to remove into Maryland and become *at will* a citizen of that State certainly could not be controlled, in advance, by the State of Maryland, by a requirement as to evidence of intention. (*Crandall* v. *Nevada*, 6 Wallace, 36; *Henderson* v. *Mayor*, 92 U. S. 268; and *Vance* v. *W. A. Vandercook Co.*, No. 1, 170 U. S. 438, 455, deciding that a right to engage in interstate commerce could not be fettered in advance by a State.) Does it not necessarily follow that as the right of residence and consequent citizenship was a continuing one, so long as the conditions existed which under the Constitution of the United States annexed the right and privilege to the person of the plaintiff in error, the State of Maryland was without power to arbitrarily and oppressively burden and in effect take away the acquired right? This, however, is the result accomplished by the statute in question, for no recognition of citizenship is accorded one who does not comply with its terms, and if a declaration of intention is made, the intention is made to date from that time, when also the constitutional year of residence is made to commence.

Before making a critical examination of the statute to exhibit its oppressive character, I premise that, for convenience, I may not every time I employ the appellation "citizen" couple it with "resident." They possess the same meaning in the Fourteenth Amendment. (*Anderson* v. *Watt*, 138 U. S. 702.) And see *Sully* v. *American*

National Bank, (178 U. S. 298.) The Constitution of Maryland was adopted in convention after submission to the States of the proposed Fourteenth Amendment, and the provisions of section 1 of article 1 of that Constitution, establishing the qualifications of voters, obviously were intended to harmonize with the amendment. Certain it is when that section is read in connection with article 7 of the Declaration of Rights of Maryland, the fact that "resident" was used as synonymous with "citizen" is made clear beyond dispute. The provision in the declaration reads as follows:

"ART. 7. That the right of the people to participate in the Legislature is the best security of liberty and the foundation of all free government; for this purpose elections ought to be free and frequent; and every male citizen, having the qualifications prescribed by the Constitution, ought to have the right of suffrage."

Coming then to the statute, and assuming that the declaration of intention was made to relate back to the time when the declarant actually became a citizen of Maryland, are its provisions oppressively burdensome and calculated to deter citizens of the United States from availing of the right of State citizenship conferred by the Constitution of the United States? This question is answered by the criticism of the statute made in the brief filed below, and it is here reproduced. It was said:

"That the statute operates an unjust discrimination against citizens of the United States who remove into Maryland after March 29, 1902, is equally plain. Citizens of the United States who removed into Maryland prior to March 29, 1902, and native-born citizens, residents of Maryland, may obtain registration as qualified voters without any prior declaration of intent. The statute, in the duty it imposes upon those citizens of the United States who come into Maryland after March 29, 1902, is onerous and oppressive. It takes no account of the pecuniary circumstances, age, and state of health of the removant, his

business and family cares and responsibilities, the time and attention that may be necessary to get settled in the new home, the contingency of sickness of the removing party or of a member of his household, the remoteness of his residence from the county seat, and the expense and loss of time which might be occasioned by a compliance with the law. ALL MEN, young or old, the aged and infirm, the invalid as well as the robust young man, the very poor as well as the man possessed of a competency; ALL MEN, I repeat, whatever the danger to life or health and the pecuniary sacrifice entailed, MUST visit the county seat—to do what? Merely make a statement to the clerk of the county, not even made impressive by the sanctity of an oath, that on the day he makes the declaration, though his residence is then in Maryland and his status is that of a citizen of Maryland, he intends TO BECOME a citizen and resident of Maryland; and all this, despite the fact that other citizens of Maryland need only declare what their past and continued intention has been and is, when being examined by the officers of registration, and despite also the principle stated in *Southerland* v. *Norris*, (74 Md. 331,) and cases cited, that the place where a person lives is presumptively his domicil or legal residence. It matters not also if, on appearing before the clerk, the would-be declarant, on comprehending the full import of the declaration, has conscientious scruples against even impliedly declaring that he is not yet a citizen and resident of Maryland, for this he does when he asserts that he intends TO BECOME a citizen and resident, and observes that his constitutional year of residence is by the statute made to date from the day the declaration is made. He is not permitted to qualify his declaration, and if unwilling to repudiate his status and waive his acquired rights as to length of residence already earned by reason of such status, he must return to his home and continue a disfranchised citizen. Is it because the Legislature had doubts whether many might not refuse to make such a declaration that it did not require it to be upon oath? Further, he must do something also not required of other citizen voters in Maryland. He must procure, preserve, and produce to the registration officers a certified copy of the record made of the declaration of intention."

How did the State court meet this arraignment of the statute? By asserting that the statute was an effort to supply a "safer" rule of evidence than that ordinarily employed for solving the question of the intention of a person removing into a State to change his legal domicil, and that the requirement of a declaration of intention was not unreasonable, or a burdensome or offensive condition, because "no fee is chargeable against them for so doing, and none for obtaining a certified copy thereof." Not a word respecting the criticism actually made of the act!!!

The statement of the Court of Appeals of Maryland regarding the purpose of the General Assembly in enacting the statute is, I submit, wild *conjecture*, in nowise justified by the language of the statute. In this court (*Shelton* v. *Tiffin*, 6 How. 163,) it has been recognized that "intention" as to domicil "may be shown *more satisfactorily* by acts than declarations." And when it is borne in mind that in Maryland applicants for registration as qualified voters are interrogated by the officers of registration under oath (Sec. 16, Art. 33, Code of Public General Laws,) and that an attempt to register illegally is punishable by imprisonment "in jail or in the penitentiary for not less than six months nor more than five years," (Sec. 82, Ib.,) it is repugnant to common sense to impute to the members of the General Assembly of Maryland the purpose when enacting this statute to provide a "safer" rule of evidence than that then prevailing, by the requirement—unrestrained by statutory penalties for a false statement—of an intention "TO BECOME" a resident and citizen of Maryland. Rather, it would seem that the object sought to be obtained was to deter persons within the purview of the statute from attempting to establish their State citizenship and consequent right to acquire and exercise the elective franchise in Maryland. If the act was designed as a *bona fide* registration law, why was not provision made for ascertaining when persons affected by the act

actually removed into Maryland, and when the intention was formed to make Maryland the place of fixed abode, and why was not the right under the State Constitution to be registered after an actual residence of one year respected, and why were not similar requirements imposed upon other classes of citizens than those who removed into Maryland after March 29, 1902? Were it allowable to refer to the statements of those having knowledge on the subject as to the origin and purpose of this statute, I should quote from an address delivered by Senator Gorman, of Maryland, at Highland, Howard County, Maryland, on October 24, 1903, as reported in the Baltimore American of October 25, 1903, page 3. But this, I understand, is not permitted.

It is a fundamental principle of law, however, that the legitimacy of the exercise of any legislative authority concerning the constitutional rights of the citizen, whatever the language employed in the statute, is to be tested and determined by its "natural and reasonable effect" upon that right. It is a maxim alike of the law and common sense that no power can be exercised indirectly which cannot lawfully be exercised directly. (*Reid* v. *Colorado*, 187 U. S. 137, 150; *Blake* v. *McClung*, 172 Ib. 239, 176 Ib. 59; *Counselman* v. *Hitchcock*, 142 Ib. 547, 585; *Minnesota* v. *Barber*, 136 Ib. 313, 320; *Henderson* v. *New York*, 92 Ib. 259, 268.)

Testing the statute by this principle, it is plainly, I contend, an act which unreasonably burdens and fetters the Federal privilege of State citizenship and is calculated to deter citizens of the United States who remove into Maryland after March 29, 1902, from attempting to avail of such privilege.

The deterrent effect upon the exercise of even a constitutional right resulting from the placing obstacles in the way of its enjoyment was long ago recognized. Alexander Hamilton, in the 61st number of The Federalist, considering the clause of the proposed Constitution respecting

the time, place and manner of holding elections for Senators and Representatives, and noticing the objection that there should be a declaration that all elections should be held in the counties were the electors resided, said (p. 281):

"The Constitution of New York makes no other provision for *locality* of elections, than that the members of the Assembly shall be elected in the *counties;* those of the Senate, in the great districts into which the State is or may be divided; these at present are four in number, and comprehend each from two to six counties. It may readily be perceived that it would not be more difficult for the Legislature of New York to defeat the suffrages of the citizens of New York, by confining elections to particular places, than for the Legislature of the United States to defeat the suffrages of the citizens of the Union, by the like expedient. Suppose, for instance, the city of Albany was to be appointed the sole place of election for the county and district of which it is a part, would not the inhabitants of that city speedily become the only electors of the members of both of the Senate and Assembly for that county and district? Can we imagine that the electors who reside in the remote subdivisions of the counties of Albany, Saratoga, Cambridge, &c., or in any part of the county of Montgomery, would take the trouble to come to the city of Albany, to give their votes for members of the Assembly or Senate, sooner than they would repair to the city of New York, to participate in the choice of the members of the Federal House of Representatives? The alarming indifference discoverable in the exercise of so invaluable a privilege under the existing laws, which afford every facility to it, furnish a ready answer to this question. And, abstracted from any experience on the subject, we can be at no loss to determine that when the place of election is at an *inconvenient distance* from the elector the effect upon his conduct will be the same, whether that distance be twenty miles, or twenty thousand miles."

Now, by the statute complained of citizens of the United States, residing in Maryland, although citizens of Maryland by virtue of the Constitution of the United States, if

they have removed into Maryland since March 29, 1902, must visit the county seat, whatever the inconvenience and pecuniary loss to result, in order that their status as a citizen of the State may attach. The plaintiff in error lives twelve miles from the county seat of the county of his residence, and, by the circuitous mode necessary to be taken, a trip to Rockville and back means the loss of half a day's time, railroad fare, &c. In some places on the Eastern Shore, however, river transportation is for many the only available mode of reaching the county seat, and a visit to such place necessitates being at the steamboat wharf around midnight, loss of several days' time, and considerable money outlay. Needless to say, there are many persons affected by this statute who will not yield compliance to its requirements.

The Court of Appeals of Maryland, in the case which it relied upon as authority for the correctness of the ruling that the statute in question was valid, (*Southerland* v. *Norris*, 74 Md. 326,) expressly decided that voting qualifications in Maryland are solely prescribed in the Constitution of the State, but that requirements of the nature of these we have been considering are not conditions having the force of qualifications, but constitute mere rules of proof. In the brief below that case was thus referred to:

"In *Southerland* v. *Norris*, (74 Md. 326, 331,) the act of 1890, ch. 573—respecting proof of intention not to abandon a legal residence in Maryland on going into another State to live—was held valid, on the theory that the section merely substituted, for the prior rule by which residence was proven, a new and appropriate rule of evidence. Holding that the presumption from the fact of a citizen of Maryland going to live in another State was that the new State had been adopted as the permanent domicil of the party, which presumption operated against the claim that the legal residence continued in Maryland, it was decided that the removing party, if he still asserted a legal residence in Maryland, might be compelled to rebut the presumption referred to within a limited time after

the passage of the act if he had left the State prior to the passage of the act, but such declaration was to be as to his intention *when he departed from Maryland*, or to make a like affidavit prior to a departure from this State after the passage of the act. The failure to make the affidavit was held to change the previous rule of evidence by ascribing greater probative force to the act of removal and the living in another State. (Ib. 331.) The case at bar is the converse of the Southerland case. Here the removal was from another State INTO Maryland, and presumptively, according to the principles declared in the opinion in the Southerland case, the removing partly acquired a legal residence in MARYLAND. The declaration of intention required of Mr. POPE, however, if made, would not have rebutted the presumption arising from the act of coming to live in Maryland, as would the affidavit under consideration in the Southerland case; it but strengthened the presumption that Maryland was the legal domicil of Mr. Pope. Yet, while in the Southerland case, because of the failure to make affidavit as to intention, GREATER probative force was given to the presumption of the legal residence being *at the place where the party lived;* here the failure to make an unsworn declaration which, if made, could only have operated to *strengthen a presumption* that arose from the mere fact of removal into and living in this State, in favor of the removing party, is given the effect of prohibiting the introduction of any evidence in favor of the claim that Maryland was the place of his permanent domicil. Thus the Legislature catches claimants to citizenship in Maryland, going or coming. I submit that the Legislature cannot blow hot and cold in this fashion. There must be something radically wrong in a doctrine which will operate such results."

In the brief below, also, at much length was discussed the correctness of the ruling in *Southerland* v. *Norris*, that the General Assembly of Maryland was vested with an unlimited power to enact and alter rules of evidence on any subject. The authorities cited were *Ogden* v. *Saunders*, 12 Wheat. 349 (statutes of limitation); *Webb* v. *Den*, 17 How. 576 (statute presuming lawfulness of deed after registry of twenty years); *Fales* v. *Wadsworth*, 23 Maine, 553 (statute making protest of an inland note evidence

of the facts therein stated); *Gibbs* v. *Gale*, 7 Md. 76 (statute permitting introduction of parol evidence to explain a written contract); *Rich* v. *Flanders*, 39 N. H. 304, 317 (statute removing disqualification of interest in witnesses); and *Southwick* v. *Southwick*, 49 N. Y. 510 (statute making husband and wife witnesses for or against each other). It is submitted that the authorities relied upon by the State court, in support of the stated doctrine, especially when considered in connection with the particular facts of each case, do not do more than decide that rules of proof *which do not impair substantial rights*, may be established or altered at the will of a legislative body. Such is undeniably the doctrine of this court. (*Marx* v. *Hanthorn*, 148 U. S. 172; *Turner* v. *New York*, 168 U. S. 90, 94, and cases cited.) Nor do the cases cited below lend any support whatever to the doctrine that probative force may be given to a particular fact which that fact does not in any wise tend to prove, such as that a compulsory statutory declaration of an intention "to become" a resident and citizen of a State conclusively establishes that the declarant had not theretofore been such resident and citizen. That the so-called rule of evidence here considered does impair substantial rights has been demonstrated. It absolutely annihilates the period of residence earned under the operation of the Constitution of the United States prior to the making of a declaration of intention, and refuses all recognition to the existence of a legal residence within the State if the statute is not obeyed. By requirements of conditions to be performed by a would-be voter who asserts his State citizenship and desires the enjoyment of the privileges attaching to that status, and making their performance essential before there can be a recognition of State citizenship, obstacles are imposed calculated to deter many from asserting such citizenship. No discrimination is exerted against any other class of citizens, except those residents of Maryland who leave the State to temporarily abide elsewhere, who cannot absent them-

selves from the State without risk of forfeiting their legal residence in Maryland, unless they make a certain affidavit at the county seat and return to Maryland six months before an election. (See the law of 1890 considered in *Southerland* v. *Norris*, *supra*, repealed in 1896, and re-enacted in 1901. Laws of 1901, ch. 2, p. 10.) It appears to be the complement of the statute under consideration, as, under the operation of both statutes, poor and ignorant citizens of Maryland may readily lose the voting privilege.

It is not believed to be necessary to review the decisions of this court, cited in the opinion of the Court of Appeals of Maryland, as maintaining the power of the State to regulate the right of suffrage, nor compare those decisions with later decisions. It may be said of them, however, that they were written at a time when the Fourteenth Amendment was regarded as having a very restricted operation, a view long since discarded. (*Cotting* v. *Godard*, 183 U. S. 105, and cases cited.) The reasoning of these opinions, therefore, must be weighed with this fact in mind. The cases relied upon by the State court, however, do not contravene the proposition here advanced, that the power must be exercised like every other power of the State, in complete subordination to the Constitution of the United States and so as not to invade rights conferred and protected by that instrument. If the statute under consideration is a lawful exercise of a power to enact rules of evidence, then all rights—property as well as political—are at the mercy of a legislative body. The Constitution of the United States makes residence within a State one of the qualifications of a Senator or Representative of the United States. Why may not the State require some ridiculous character of proof of such residence to be made at a county seat, or even at the capital of the State, as a condition precedent to a nomination to such an office? So, the General Assembly may make the being a registered voter a qualification for holding a State or municipal office. (*Mayor &c. of Baltimore* v. *Lyman*, 92

Md. 591.) And numerous other possible instances of the exercise of such an arbitrary power can readily be supposed, such as confining the right of hunting and fishing within the State to registered voters, attaching the disabilities of alienage until a statutory declaration is made of citizenship of the United States and of the State, &c.

Conclusion.

In conclusion, it is respectfully submitted that it has been demonstrated that the statute in question was not a *bona fide* or reasonable exercise of the power to enact laws for the regulation of persons having the qualification of voters in Maryland, and that the statute unreasonably burdened, impeded and abridged a privilege derived under the Constitution of the United States. (*Henderson* v. *Mayor*, *supra*; *Crandall* v. *Nevada*, *supra*.) The statute should, therefore, be adjudged to be void and of no effect.

The judgment of the Court of Appeals of Maryland should be reversed, with costs to the plaintiff in error, and the cause should be remanded to that court with instructions to set aside aside the order of the Circuit Court of Montgomery County, Maryland, with costs to the plaintiff in error, and to direct the Circuit Court, in conformity to law, to order the name of the plaintiff in error to be placed on the registry books of Election District No. 7 of Montgomery County, Maryland, as a duly qualified voter of the State of Maryland, with costs to the plaintiff in error.

WM. H. POPE,
Plaintiff in Error, pro se.

APPENDIX.

Exhibit A.

Extracts from the present Constitution of Maryland, ratified by the People on September 18, 1867:

"ARTICLE I.

Elective Franchise.

SEC. 1. All elections shall be by ballot; and every male citizen of the United States, of the age of twenty-one years, or upwards, who has been a resident of the State for one year, and of the legislative district of Baltimore City, or of the county in which he offers to vote, for six months next preceding the election, shall be entitled to vote, in the ward or election district in which he resides, at all elections hereafter to be held in this State; * * *"

(By sections 2 and 3 adults who have been convicted of larceny or other infamous crime and not pardoned; persons of unsound mind; and all persons convicted of being concerned in bribing of voters, illegal voting, &c., are disqualified from voting.

By section 4 it is made the duty of the General Assembly to pass laws to punish with fine and imprisonment, among other offenders, any person who "shall vote in any county in which he does not reside.")

"SEC. 5. The General Assembly shall provide by law for a uniform Registration of the names of all the voters in this State who possess the qualifications prescribed in this Article, which Registration shall be conclusive evidence to the Judges of election of the right of every person thus registered to vote at any election thereafter held in this State; but no person shall vote at any election, Federal or State, hereafter to be held in this State, or at any municipal election in the City of Baltimore, unless his name appears in the list of registered voters; and until the General Assembly shall hereafter pass an Act for the Registration of the names of voters, the Law in force on

the first day of June, in the year eighteen hundred and sixty-seven, in reference thereto, shall be continued in force, except so far as it may be consistent with the provisions of this Constitution; and the registry of voters, made in pursuance thereof, may be corrected, as provided in said Law; but the names of all persons shall be added to the list of qualified voters by the officers of Registration, who have the qualifications prescribed in the first section of this Article, and who are not disqualified under the provisions of the second and third sections thereof."

Exhibit B.

Portion of Section 23 of Article 33 of Code of Public General Laws of Maryland, title "Election," sub-title "Registration:"

"23. Any person who feels aggrieved by the action of any board of registry in refusing to register him as a qualified voter, or in erasing or misspelling his name, or that of any other person on the registry, or in registering or failing to erase the name of any fictitious, deceased or disqualified person, may at any time, either before or after the last session of the board of registry, but not later than the Saturday next preceding the election, in the City of Baltimore, and not later than the Tuesday next preceding the election, if in the counties, file a petition, verified by affidavit, in the Circuit Court for the county, or if the cause of complaint arises in Baltimore City, in any court of Baltimore City, setting forth the ground of his application, and asking to have the registry corrected. The court will forthwith set the petition for hearing, and direct summons to be issued requiring the board of registry to attend at the hearing or by counsel; * * * At the hearing, evidence subject only to the ordinary rules of evidence (as modified by the provisions of this section), may be introduced for or against the application, and the judge shall dispose of the matter summarily, by granting or refusing the order prayed, and the clerk of the court shall make a minute of the proceeding. The cost of proceedings in all such appeal cases shall from and after the passage of this act be one-half of those provided for under existing law. If the

board of registry shall have returned the registers to the Supervisors of Elections, a certified copy of any such order granted by the court shall be delivered to said Supervisors, who shall thereupon make the required correction upon the proper registers, and under the head of 'Remarks' note that the same was made under such order of the court. The court may enforce any such order by attachment as in proceedings for contempt. No person admitted to the registry by the order of the court shall be protected by such order if prosecuted for false registration or false voting. In all such cases, the petitioner may be represented by counsel, and in disposing of the petition the court shall have discretion to impose the costs upon the petitioner, the County Commissioners or the Mayor and City Council of Baltimore, or the Board of Registry, or any member or members thereof, as justice and equity may require; but no attorney's appearance fee shall be taxed as part of such costs. In Baltimore City the Supreme Bench shall, from time to time, assign a judge or judges before whom, or any of whom, such petitions shall be heard, and neither party shall have any right of removal. Exceptions may be taken to any ruling of the court at the hearing of any such petition and appeal allowed to the Court of Appeals, as in other cases; all such appeals shall be taken within five days from the date of the decision complained of, and shall be heard and decided by the Court of Appeals as soon after the transmission of the record as may be practicable."

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Clerk.

Supreme Court of the United States.

No. 503.—October Term, 1903.

WILLIAM H. POPE, Plaintiff in Error,
vs.
JOHN M. C. WILLIAMS and JOHN W. HARPER, as the Board of Registry of Election District No. 7, of Montgomery County, Maryland, Defendants in Error.

In error to the Court of Appeals of the State of Maryland.

Reply Brief for Plaintiff in Error.

Premising that the brief for plaintiff in error seems not to have been before counsel for the defendants in error when composing their brief, I shall specially notice one or two contentions contained therein.

As to the claim that the writ of error should be dismissed, because the defendants in error have not control of the books of registry.

The statutory provision under which this proceeding was begun, contemplates that the defendants in error shall represent the State at all stages of a controversy like that at bar. It is provided (Ex. B, main brief):

"If the board of registry shall have returned the registers to the supervisors of elections, a certified copy of and such order granted by the court shall be delivered to said supervisors, who shall thereupon make the required correction upon the proper registers, and under the head of 'Remarks' note that the same was made under such order of the court."

The judgment of the Court of Appeals of Maryland has fixed the status of the plaintiff in error as not being that of a resident and citizen of Maryland, and unless this court affords relief, it is not open to the plaintiff in error hereafter to assail the validity of the statute whose enforcement has determined such status. Whether the duties of the defendants in error as officers of registration have ceased by operation of law or by their own volition, they must stand in judgment that a continuing wrong committed may be remedied. (*United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 307.) The cases of *Summerson* v. *Shilling*, (94 Md. 582, 591,) are not in point. The proceeding was an ordinary one in mandamus, and merely required the doing of acts whose nonperformance only affected the rights of the party as to the particular election.

"Civil" Rights.

Indirect criticism is made of the claim of plaintiff in error that the denial of the Federal right operated to deprive him of "civil" rights and privileges. The expression "civil" was plainly used in its broadest sense, and as embracing all personal rights, whether property, social or political rights. Mr. Justice Story and the Court of Appeals of Maryland recognize the appellation as proper. See excerpt made in brief for defendants in error at page 16 from the opinion of Cochran, J., in *Anderson* v. *Baker*, (23 Md. 578.) So, also, this court has, in effect, given the

same recognition to the use by me made of the term. (*Cummings* v. *Missouri*, 4 Wall. 321.)

Compliance with the act of March 29, 1902.

The statute lends no countenance to the construction that the personal attendance of the declarant at the county seat is not compulsory.

The main brief for the plaintiff in error fully meets the discussion on the merits contained in the opposition brief. But, for the convenience of the court, I briefly summarize my contentions as to the merits. They are:

1. "Resident" and "citizen" in the Maryland Constitution are synonymous. See authorities in main brief on page 11, and *Blake* v. *McClung*, (172 U. S. 247.)

2. The act of March 29, 1902, clearly imposes a CONDITION to the acquisition of the Federal privilege of State citizenship. (*Vance* v. *W. A. Vandercook Co.*, No. 1, 170 U. S. 438, 455; *Sinnot* v. *Davenport*, 22 How. 227, 241.)

3. If the statute could possibly be construed as an attempted exercise of the power to prescribe rules of proof, its requirements are offensive and unreasonably oppressive and discriminatory, and operate to abridge and deny the Federal right of State citizenship, and the statute is consequently invalid. See authorities and discussion in main brief, p. 18, *et seq.*, and *Connolly* v. *Union Sewer Pipe Co.*, (184 U. S. 540.) At page 558 of last cited case the court said (italicizing mine):

"But the question remains to be decided whether the statute is repugnant to the Constitution of the United States. If it be, then it is not law and cannot be applied for the purpose of defeating the plaintiff's claims in these actions.

"The question of constitutional law to which we have referred cannot be disposed of by saying that the statute in question may be referred to what are called the police powers of the State, which, as often stated by this court, were not included in the grants of power to the General Government, and therefore were reserved to the States when the Constitution was ordained. But as the Constitution of the United States is the supreme law of the land, anything in the Constitution or statutes of the States to the contrary notwithstanding, a statute of a State, even when avowedly enacted in the exercise of its police powers, must yield to that law. *No right granted or secured by the Constitution of the United States can be impaired or destroyed by a State enactment, whatever may be the source from which the power to pass such an enactment may have been derived.*"

4. It may also properly be decided that the statute by reason of its oppressively discriminatory features is repugnant to the second section of Article IV of the Constitution of the United States, declaring that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. (*Blake* v. *McClung*, 127 U. S. 249, quoting from *Corfield* v. *Coryell*, 4 Wash. C. C. 371, 380.)

Respectfully submitted.

WM. H. POPE,
Plaintiff in error, pro se.

Supreme Court of the United States.

No. 503.—October Term, 1903.

WILLIAM H. POPE, Plaintiff in Error,
vs.
JOHN M. C. WILLIAMS and JOHN W. HARPER, Officers of Registration, constituting the Board of Registry for Election District No. 7, of Montgomery County Maryland.

Petition for Rehearing.

To the Honorable the Justices of the Supreme Court of the United States:

William H. Pope, plaintiff in error, respectfully asks a rehearing of this cause, upon the following grounds:

I.

The court, in the opinion by it delivered, (*a*) *has omitted to state and consider material facts bearing upon the Federal question presented by the record;* (*b*) *has misconceived the claim of Federal right made by the plaintiff in error; and* (*c*) *has decided the case upon a mistaken hypothesis.*

(*a.*) The following material facts are not referred to in the statement of facts preceding nor in the body of the opinion, viz: At the time of the removal of plaintiff in error into Maryland he was an adult male citizen of the

United States, and the Constitution of Maryland then and thereafter conferred the right to be registered as a lawful voter upon adult male citizens of the United States after a residence of one year in the State.

(b.) The Federal right asserted by the plaintiff in error was not that the right to vote in Maryland was "a privilege springing from citizenship of the United States." On the contrary, he conceded that such privilege was derived under the Constitution of Maryland. The claim made was that plaintiff in error had been deprived of the right to register and thereafter to vote—just as he might have been deprived of a State office or other political or property right—by the giving effect to the Maryland statute of March 29, 1902. This court was asked to review the judgment below because in the State court plaintiff in error had drawn in question the validity of the State statute on the ground that it was repugnant to the Constitution of the United States, and the decision was in favor of its validity. (Rev. Stat. sec. 709.) The Federal question presented by the record is, Did the Maryland act of March 29, 1902, abridge a right, privilege or immunity of the plaintiff in error *as a citizen of the United States*, (viz., his State citizenship,) contrary to the implied and express prohibitions of the Fourteenth Amendment?

(c.) The discussion, in the opinion, of the rights of plaintiff in error is based upon the facts detailed by the court in its precedent statement of facts. The court says (italicizing mine):

> The objections of a Federal nature, which are made by the plaintiff in error to the validity of the statute, are set out in his petition, *and are also contained in the above statement of facts*, and are substantially reproduced in his assignment of errors.

Yet, as already stated, facts very materially bearing upon the rights of plaintiff in error are not mentioned in that statement. So, also, the court assumes that no other ground of complaint against the statute was available to plaintiff in error than that which might result solely "by reason of his removal into Maryland with an intent to become a citizen of that State." There is not contained in the opinion any allusion nor is any weight given to

the fact that immediately upon the removal of plaintiff in error into Maryland, *having then formed the intention to make that State his permanent home*, he became, *by virtue of the Constitution of the United States*, a citizen of Maryland. It is respectfully submitted that the question which is considered and passed upon in the opinion is whether the plaintiff in error—treating him as not shown by the record to have acquired the Federal privilege of State citizenship immediately upon his removal into Maryland—can be heard, merely because of his having come into Maryland "with an intent to become a citizen of that State," to question "whether the conditions prescribed by the State (in the statute in question) were reasonable or unreasonable."

II.

In reliance upon the rulings of this court in *Southern Pacific Co.* v. *Denton*, (146 U. S. 207, and cases cited,) upholding the right of a foreign corporation to assail the constitutionality of provisions in a State law when repugnant to the Constitution of the United States, even though such law had been passed before the coming of the corporation into the State, and because it was not seriously questioned by the defendants in error that plaintiff in error could make a like objection if in fact a Federal right was abridged by the statute in question, plaintiff in error did not discuss in his brief or orally argue the question whether he was estopped, because of the passage of the statute in question before his removal into Maryland, from claiming that the statute violated the Federal Constitution. If the court intends, by the statements made in the opening paragraph of the opinion, to be understood as overruling the cases above referred to, and as having decided that plaintiff in error is estopped from questioning the constitutionality of the statute, *although it abridges his Federal right of State citizenship*, then, in the interests of justice, plaintiff in error should be afforded an opportunity to demonstrate that no element of estoppel is present in this case, particularly in view of the charac-

ter of the constitutional privilege in question, (to permit the exaction of *a surrender or waiver of which would not be in consonance with sound public policy,*) and also in view of the provisions of the second section of the fourth article of the Constitution of the United States and the decisions of this court thereon, and the terms of the Fourteenth Amendment and the decisions in respect thereto.

III.

In his brief and on the oral argument plaintiff in error did not discuss the scope and meaning of the Fourteenth Amendment as respects the extent of the power of the States to attach conditions to the acquisition of the privilege of suffrage, by classification or otherwise. This was occasioned by reliance upon the decision in *Boyd* v. *Thayer*, (143 U. S. 135,) holding that the deprivation of a State office through an erroneous denial of citizenship could be relieved against; the declaration in the *Slaughter House Cases*, (16 Wall. 80,) that on the acquisition of the Federal right of State citizenship, a citizen of the United States acquired "the same rights as other citizens of the State;" and the approval in *Blake* v. *McClung*, (172 U. S. 249,) of the statement in *Corfield* v. *Coryell*, (4 Wash. C. C. 380,) that, by virtue of the second section of the fourth article of the Constitution of the United States, a citizen of one State on removing into another State possessed the Federal privilege to acquire "the elective franchise as regulated and established by the laws or Constitution of the State," evidently having reference to provisions which operated upon the citizens of the State, generally. In view of the sweeping declarations made by the court, in its opinion, to the evident purport that a State possesses an arbitrary power, so far as the Constitution of the United States is concerned, as to the conditions which it may impose upon the acquisition of the right of suffrage by citizens of the United States removing into a State, plain-

tiff in error asks to be heard upon the proposition which he contends for, that the Fourteenth Amendment prohibits the attaching of conditions to the acquisition of the voting or any other State political privilege which are repugnant to the Constitution of the United States, and upon the further proposition that the Fifteenth Amendment does not conflict with such construction.

The undersigned, as a member of the bar of this honorable court, humbly conceives that it is proper that the writ of error herein should be reheard by this court, and he therefore respectfully certifies accordingly.

Dated Washington, D. C., April 8, 1904.

WILLIAM H. POPE,
Plaintiff in Error, pro se.

MAR

IN THE

Supreme Court of the United States.

OCTOBER TERM 1903.

No. 503.

WM. H. POPE

vs.

JOHN M. C. WILLIAMS

AND

JOHN W. HARPER,

BOARD OF REGISTRY FOR ELECTION DISTRICT NO. 7 OF MONTGOMERY COUNTY, MARYLAND.

In error to the Court of Appeals of Maryland. Advanced by special order of the Court and set for hearing on March 7, 1904.

BRIEF OF DEFENDANTS IN ERROR.

JOHN PRENTISS POE,
BOWIE F. WATERS,
For Defendants in Error.

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BRIEF OF DEFENDANTS IN ERROR.

The facts are these:

On September 29, 1903, the plaintiff in error, claiming to be a citizen of Maryland and a resident therein since June 7, 1902, applied to the defendants in error, who *then* constituted the Board of Registry for Election District No. 7 of Montgomery county, in which district he resided, to be

registered as a qualified voter on the registers of voters of that district which were *at that time* in their custody.

They declined to register him as a qualified voter, giving as their reason that he did not produce and exhibit to them the record of his intention to become a resident of Maryland at the time of his removal into the State, as required by Chapter 133 of the Acts of 1902, which went into effect on March 29, 1902.

This Act, passed as an amendment and supplement to the Public General Laws of the State, title "Elections," sub-title "Registration," as Section 25 B of that Article, is as follows:

> "Section 25 B. All persons who, after the passage of this Act, shall remove into any county of this State, or into the city of Baltimore from any other State, district or territory, shall indicate their intent to become citizens and residents of this State by registering their names in a suitable record book, to be procured and kept for the purpose by the clerk of the Circuit Court for the several counties and by the clerk of the Superior Court of Baltimore City; such record to contain their names, residence, age and occupation; and the intent of such persons to become citizens and residents of this State shall date from the day on which such registry shall be so entered in such record book by the clerk of the Circuit Court for the county or of the Superior Court of Baltimore City, as the case may be, into which county or city such person shall so remove from any other State, district or territory. *And no person coming into this State from any other State, district or territory shall be entitled to registration as a legal voter of this State until one year after his intent to become such legal voter shall be thus evidenced by such entry in such record book, and such entry or a duly certified copy thereof shall be the only competent and admissible evidence of such intent.* And the clerk of the Superior Court of Baltimore City and the several Courts of the several counties shall immediately upon the passage of this Act procure a suitable record book for the recording therein of such entries, arranged alphabetically, under the names of such persons. For every person so registered, under

the provisions of this section, they shall be entitled to demand and receive the sum of twenty-five cents to be paid to said clerks by the Mayor and City Council of Baltimore and the County Commissioners, respectively. A copy of such record, duly certified by said clerks, shall be evidence of the right of such persons to registration as legal voters, according to law, and each person so registered shall be entitled to such certified copy upon demand without charge."

The plaintiff admits that he did not indicate his intent to become a citizen and resident of Maryland at the time he moved into the State from the District of Columbia by registering his name, residence, age and occupation with the clerk of the Circuit Court for Montgomery County as prescribed by this Act, and it was because he failed thus to produce the *statutory evidence* of his citizenship and residence for the time prescribed by the Constitution of the State, to wit., one year within the State and six months within the election district, that the defendants, in the performance of their official duty, declined to register him as a qualified voter.

By the Constitution of Maryland no man is entitled to vote unless he is duly registered according to the law of the State.

After completing the work of registration which the law requires to be finished on Tuesday three weeks preceding the election in November, it is the duty of the Board of Registry to return to the Board of Supervisors of Election of the county the registers containing the names of the persons registered as qualified voters, and it is then the duty of the Board of Supervisors of Election to send these registers containing the lists of qualified voters to the judges of election not more than three days nor less than one day before the election. After the election the registers are returned by the judges of election to the custody of the Supervisors

of Election and are retained by them until September of the following year, when they are sent to a new Board of Registry appointed in the preceding July. The defendants were duly appointed as the Board of Registry in July, 1903, to serve for one year.

After finishing the registration on October 21, 1903, they delivered the registers to the Board of Supervisors of Election of the county and after the election on the 3d November, 1903, the registers were sent by the Judges of Election to the Supervisors of Election, in whose custody they now are and will remain until a *new* registration, beginning in September and ending in October, 1904, shall be made in entirely new books.

It will thus be seen that the defendants have not now these registers in their possession or custody and never will have them again in their possession or custody or subject to their control.

These facts are mentioned here in order to bring clearly before the Court the significant and controlling fact that since the judgment of the Court of Appeals of Maryland, which the plaintiff asks this Court to review and reverse, there has been without the fault of the defendants such a change in the condition of things that it is not now possible for the defendants to register the plaintiff, even if this Court should think that the Court of Appeals of Maryland erred in its decision and judgment, and that the plaintiff was entitled under the 14th Amendment to be registered when he applied for registration on the 29th of September, 1903.

After being refused registration for the reason given by the defendants for their official act, the plaintiff filed a petition under Section 23 of the Election Law of Maryland, in the Circuit Court for Montgomery County, alleging that Section 25 B of that law is unconstitutional because repugnant to the Constitution of Maryland and also to the 14th Amendment to the Constitution of the United States and *praying for the passage of an order directing his name to be entered as a qualified voter on the registers.* (Record, 8-11.)

The defendants demurred to this petition. The Circuit Court for Montgomery County sustained the demurrer. Thereupon the plaintiff appealed, as authorized by the Maryland law, to the Court of Appeals.

On the 22d of October, 1903, the order of the Circuit Court for Montgomery County was affirmed by the Court of Appeals.

Thereupon the plaintiff brings the case to this Court, insisting that Section 25 B is unconstitutional and void because contrary to the 14th Amendment.

It will be observed that in his petition in the Circuit Court he assails the Act chiefly because of its alleged violation of the Constitution of Maryland, laying but little stress upon his contention that it also violated the 14th Amendment. The Court of Appeals held that the Act was not repugnant to any provision of the State Constitution nor of the Fourteenth Amendment.

The reasons for these conclusions will be found fully stated in the opinion of the Court delivered by Judge Page. (Record 13-18.)

So far as the Act is claimed to be contrary to the Constitution of the State the question is finally set at rest by the decision of the Court of Appeals and that question is not subject to review by this Court.

It has long been an established doctrine of this Court that the construction by the Courts of the several States of their constitution and laws is binding upon this Court in all cases except where a federal question is involved.

Guthrie on 14th Amendment, 44.
Brannon on 14th Amendment, 395–419.
Slaughter-House Cases, 16 Wall. 66.
Louisiana vs. Pilsbury, 105 U. S. 294.
Gibson vs. Mississippi, 162 U. S. 582.
Forsyth vs. Hammond, 166 U. S. 519, and cases cited.

Accepting this as a settled doctrine, the plaintiff cannot and does not claim here that Section 25B violates in any way the Constitution of the State, but limits his contention to the single ground that it is repugnant to the 14th Amendment.

In his petition to the Circuit Court he states his position as follows:

> "6. Said law is repugnant to that portion of section 1 of the Fourteenth Amendment of the Constitution of the United States which declares that 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, *and of the State wherein they reside*,' because by said law it is in effect ordained that male citizens of the United States, of the age of twenty-one years and upwards, removing into the State of Maryland after March 29, 1902, with the intention of making said State their permanent domicile, shall not be treated as citizens or residents of Maryland, or given the rights and privileges of citizens of Maryland until they have been naturalized in the mode prescribed by said law.
>
> "7. Said law is also repugnant to that portion of section 1 of said Fourteenth Amendment to the Constitution of the United States which prohibits a State from denying any person within its jurisdiction the equal protection of the laws, because said law operates an unjust and unreasonable discrimination against citizens of the United States coming into the State of Maryland to permanently reside therein after March 29, 1902, who may desire to become qualified voters therein." (Record, 10-11.)

In his assignment of errors he states his contention and prayer for relief as follows:

II.

> "The Court of Appeals erred in the decision and judgment rendered by it in holding and deciding that the Act of the Legislature of Maryland assailed in the above cause was a valid statute and was not repugnant

to fundamental and inalienable rights of citizens of the United States and to implied guarantees of the Constitution of the United States whereby every citizen of the United States is entitled to remove into any State of the Union without being subjected (because of removal after a particular date from another State, or from a district or Territory of the United States), to the performance of offensive, vexatious and oppressive conditions as a prerequisite to the acquisition and enjoyment of civil rights and privileges.

III.

"In holding and deciding that the act complained of was a valid statute, and did not operate an unjust discrimination against citizens of the United States removing into Maryland after March 29, 1902, and was not repugnant to that provision of the first section of the Fourteenth Amendment to the Constitution of the United States which forbids a State to deny to any person within its jurisdiction the equal protection of the laws.

IV.

"In holding and deciding that the law complained of was a valid statute, that it did not abridge or deny a right and privilege derived from the Constitution of the United States (to wit, the status of resident and citizen of Maryland), and that it was not repugnant to that portion of the first section of the Fourteenth Amendment to the Constitution of the United States which declares that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

"Wherefore, because of the above recited errors, it is prayed that the decision and judgment of the Court of Appeals of Maryland, rendered in the above entitled cause, be reversed, with direction." (Record, pages 6 and 7.)

POINTS.

For the defendants in error it will argued:

I.

That the writ of error should be dismissed because it is no longer within the power of the defendants to register the

plaintiff, for the reason that the registration books are not now and never will or can be in their possession or custody or subject to their control.

Their work as registration officers came to an end on the Tuesday, three weeks before the election on the 3d of November, 1903.

Maryland Code, Article 33, Sections 29 and 30.

Their possession and custody of these books ceased two days thereafter.

Code, Article 33, Section 30.

All their duties and powers as registration officers have long since terminated.

After the election the registration books were delivered to the Supervisors of Election of Montgomery County, in whose custody they now are and in whose custody they will remain until the expiration of their term of office on the second Monday of May, 1904.

Under the existing law of Maryland an entirely new registration will be made in the counties of Maryland and in the city of Baltimore in September and October next.

The terms of the existing Boards of Supervisors of Election in the several counties and in Baltimore City will expire by constitutional limitation in May next. The successors in office of the Board for Montgomery county will be charged with the duty of appointing a new Board of Registry for that county in July, 1904.

The defendants accordingly are now absolutely *functi officio*, and no mandate of this Court directing them to register the plaintiff as is now prayed for by him could be effective.

The defendants could not obey it. As to them it would be wholly nugatory.

Practical difficulties of this kind in the way of a reversal of judgments or orders appealed from are not new in this Court.

"The duty of this Court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when pending an appeal from the judgment of a lower Court and without any fault of the defendant, an event occurs which renders it impossible for this Court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the Court will not proceed to a formal judgment, but will dismiss the appeal. And such a fact, when not appearing on the record, may be proved by extrinsic evidence."

Mills vs. Green, 159 U. S. 653.

"The lower Courts of the United States and this Court on appeal from their decisions take judicial notice of the Constitution and public laws of each State of the Union."

Ibid, 657.

This very question arose in Schilling vs. Summerson, 94 Md. 582; Ibid., 591, and the Court of Appeals there held that they could not issue a mandatory order to compel the Board of Registry to register a person after the election.

This point, if well taken, disposes of the case and will necessarily call for dismissal of the writ of error.

II.

But apart from this, we shall contend that the Act (Section 25 B) does not violate any provision of the 14th Amendment, and is consequently altogether valid.

A.

It does not in any way affect or impair any "fundamental and inalienable rights" of the plaintiff as a citizen of the United States secured or guaranteed to him by that Amendment.

It does not subject him to any "offensive, vexatious and oppressive conditions as a prerequisite to the acquisition and enjoyment of *civil* rights and privileges," much more *political* rights and privileges contrary to that amendment. Nor does it deny or abridge his privilege to remove from his former home in the District of Columbia to a new home in Maryland, or put any obstacles whatever in the way of such removal.

B.

It does not operate as an unjust discrimination against him as a citizen of the United States removing into Maryland, nor "deny" to him "the equal protection of the laws."

C.

On the contrary, it is a law which applies uniformly and equally to *all* citizens of the United States removing into Maryland and desiring to become qualified voters therein without distinction or discrimination of any kind whatsoever, and relating exclusively to suffrage wholly irrespective of race, color or previous condition of suffrage is not within any of the prohibitions, or provisions of the 14th Amendment or of the 15th Amendment.

ARGUMENT.

I.

Construction and Effect of the Act.

Obviously the first question that presents itself is the meaning and intent of the Act. These are not difficult to see. We were suffering in Maryland from an influx of non-residents, the length and purpose of whose sojourn in the State, so as to entitle them to registration as legally qualified voters, were not always easy to ascertain with any degree of reasonable certainty. Depending as the question of *residence* in such cases does upon the permanent abandonment of one domicile and the acquisition of another, accompanied by a

definite and fixed intention to give up the old and make this new domicile the home, abode, habitation, residence, it is apparent that residence in its legal sense is made up of two distinct elements: *first*, the physical, tangible fact of removal into the State; and *second*, the *quo animo* or intent with which such removal is made.

Mitchell vs. U. S., 21 Wall., 350.

Confessedly, a man may reside, that is to say, dwell in and occupy a habitation for a longer or shorter time, either with or without entertaining the intent necessary to constitute *legal residence*. From the fact of a continuous dwelling in one place for one year an inference *may* be drawn that the occupant of a dwelling in such place intended thereby to acquire a *legal* residence. But this inference will plainly be erroneous if in point of fact such intention did not exist during the whole of that year. And wherever the question of legal residence *vel non* for one year arises, the evidence necessary to establish such residence must show the existence of the actual habitation for that period, and at the same time and *for the same length of time* the existence of the intent thereby to acquire such legal residence. There must be, in short, a co-existent concurrence of the outward visible domicile, and the inward, but none the less real intent—*and both must be proved.*

When a man who has resided all his life in the District of Columbia moves into Maryland, he may go there *either* as a temporary sojourner not intending to locate himself there permanently with a view to becoming a citizen and voter; *or* he may go there with the fixed and definite intent of quitting altogether his former abode and of acquiring a permanent home and legal residence there, *accounting from the very commencement of his removal into the State; or again* he may go with no definite intent at all at first, and may not form his intent to become a citizen, and in due time thereafter a voter, until some time *after* his removal.

All these three classes of cases may and do constantly occur.

Now, under the Constitution of Maryland a fixed residence of one year within the State accompanied by an actual intent to become a resident, coincident with such actual residence and *for the same length of time*, that is, for one year, is necessary to entitle a person coming from another State or from any district or territory to be registered as a qualified voter in Maryland.

How to ascertain whether non-residents coming into Maryland from other States, districts or from any one of the territories, and presenting themselves for registration as legally qualified voters, have in fact lived in Maryland for one year, with the intent accounting from the commencement of their removal into the State to acquire a legal residence, entitling them to registration as voters, came to be a practical, serious and disturbing question.

How to deal with this situation, was the difficulty.

Under pre-existing law, that is to say, according to common law rules of evidence, modified by the statutory enactments making parties competent witnessess in their own behalf, and giving them the right to testify as to their intent in respect of any step taken or thing done or proposed to be done, a party claiming to have acquired the legal right to register as a qualified voter by reason of a residence for one year in the State, could testify as to the date of his coming into the State and as to his intent to acquire a legal residence, which when continued for one year would entitle him to registration and he could also testify as to the precise *punctum temporis* when such intent was first formed. (Fenwick vs. State, 63 Md. 241; Fisk vs. Chester, 8 Gray, 508.) *His testimony might be true or false.*

He could also prove his oral or written declarations showing such intent, and his intent could also be sought to be inferred from his acts. On the other hand, his declarations

and acts inconsistent with such intent could be proved against him.

If nothing to the contrary appeared, the *intent* to acquire a legal residence might be *presumed* and frequently was presumed from the bare *fact* of actual residence, when such actual residence and the precise time of its commencement were clearly and truly proved.

Prior to the enactment of section 25 B, our Maryland law admitted all testimony of this kind to prove or disprove that the person applying for registration as a voter, possessed the constitutional qualifications—and the result was that the determination as to the existence or non-existence of the constitutional qualifications became a matter of doubt, difficulty, conflicting testimony and rebuttable presumption. In other words, the decision of the question depended upon rules of evidence and their correct and proper application to the facts of each case.

After some careful consideration it was believed that the difficulty could be lawfully and constitutionally obviated by appropriate legislation to take effect *in futuro*, prescribing a simple, easy, uniform, reasonable and definite rule of evidence whereby and whereby alone, the intent of the non-resident to become a resident, so as in due time to be entitled to registration as a qualified voter, might be unmistakably manifested and proved. It was believed to be within the clear power of the Legislature to change and modify pre-existing rules of evidence relating to the subject, care being taken that the change did not disturb or impair vested rights nor alter, add to or abrogate the constitutional qualifications of voters.

Cooley's Const. Law (7th Edition, 1903), 524.

11 Am. and Eng. Encycl. of Law (2d Edition), title Evidence, page 550, and cases there cited.

6 Am. and Eng. Encycl. of Law (2d Edition), title Constitutional Law, page 950, and cases there cited.

Section 25 B was drawn in this view. Its meaning is clear; its purpose apparent. It applies equally to all non-residents coming into the State, whether white or colored. It operates *prospectively* and only upon persons who after its passage choose to take up their residence in Maryland. The declaration of the intent to acquire a legal residence is required to be made to the clerk of the Circuit Court for the county, and to be recorded by him without cost to the party, and a copy is to be furnished to the party without charge. The old rule of evidence, whereby oral declarations of intent were admissible is annulled, and this recorded written declaration is substituted as the only competent testimony.

The Court of Appeals have decided in several cases that legislation of this sort relating to persons abandoning their homes in Maryland and removing from the State into other States, is constitutional and valid.

Act of 1890, ch. 573, sec. 14.
Act of 1901, ch. 2.
Code, Article 33, title Elections, sec. 25 A.
Shaeffer vs. Gilbert, 73 Md. 70-72.
Southerland vs. Norris, 74 Md. 326.
Sterling vs. Horner, 74 Md. 573.
McLane vs. Hobbs, 74 Md. 166.
Bowling vs. Turner, 78 Md. 595.
Thomas vs. Warner, 83 Md. 20.
Howard vs. Skinner, 87 Md. 559.

By their judgment in the present case they have decided that this Section 25 B is nothing but a lawful regulation of the evidence necessary to prove what constitutes "residence," as used in the State Constitution; that it does not impose qualifications for voting other than those prescribed by the Constitution; that the statutory requirement is not unreasonable or vexatious and that it does not hinder or deter any one from acquiring and exercising the right to vote.

II.

Starting, therefore, with this plain and final exposition and construction of the meaning, purpose and effect of the

Act, (which construction this Court will accept and respect as absolutely binding,) we come to the next question, viz: *How does this law, thus construed, touch or relate to any subject or matter covered by the Fourteenth Amendment?*

As has been shown it is not in any sense or to any extent a prohibition against the right of non-residents of Maryland who shall come into the State and take up their domicile or residence therein to be registered *after they shall have acquired a legal residence of one year*, but it is only a reasonable and lawful regulation of the *evidence* necessary to be exhibited by such persons to prove the fact of such residence for one year in order to entitle them to registration as qualified voters. It deals exclusively with the registration of voters as preliminary to and as a part of the exercise by them of the right of voting in Maryland. It is merely one of the regulations of the mode of exercising their right—applicable equally, uniformly and without distinction or discrimination to all persons coming within its provisions—and not at all a denial or an abridgment by State officials acting under State law of the *right to vote* of any *qualified* voter whatsoever.

It is, in short, simply and plainly a rule of evidence.

This being indisputably clear we are led to inquire into the nature and origin of the right to vote.

What sort of a right is it, and whence under our system of government is it derived?

A. *Its nature.*

Citizenship and suffrage are by no means inseparable; the latter is not one of the universal, fundamental, inalienable rights with which men are endowed by their Creator, but is altogether conventional.

Suffrage is not a right of property or absolute personal right.

The authorities leave no room for doubt or debate on this question.

The subject was fully considered by the Court of Appeals of Maryland in the great case of Anderson vs. Baker, 23 Md. 531-629, in which the validity of the Constitution of 1864 and the Registration Act of 1865, passed in conformity with its provisions, disfranchising Southern Sympathizers, was discussed and upheld.

Cochran, J. (pp. 578, 579:)

> "As we have seen, the right of suffrage is bestowed on the citizens as a necessary element in every representative Government, to the end, that the Government ordained, may be perpetual and permanent, and the purposes contemplated by its establishment, more effectually accomplished. 'The right of voting,' says STORY, in his *Commentaries on the Constitution, sec.* 580, 'like many other rights, which, whether it has any fixed foundation in natural law or not, has always been treated in the practice of nations, as a strictly civil right, derived from and regulated by each society according to its own circumstances and interests.' With us, the privilege appears to be altogether conventional and derivative, and not original or inherent in the citizens. Prescribed by the people in the exercise of their organic power, for the purpose of giving effect to their expressed will, it is impossible in the nature of things, that it should exist, or have an existence independent of that will. It is held to be a privilege, conferable by the people for sovereign purposes on a greater or less number of citizens, and the power to confer it for purposes that they may change at pleasure, necessarily implies power to withdraw or suspend it. But this is not all. The people, in clothing a citizen with the elective franchise, for the purpose of securing a consistent and perpetual administration of the Government they ordain, charge him with the performance of a duty in the nature of a public trust, and in that respect, constitute him a representative of the whole people. This duty requires that the

privilege thus bestowed, should be exercised, not exclusively for the benefit of the citizen, or class of citizens possessing it, but in good faith, and with an intelligent zeal for the general benefit and welfare of the State. It is on that ground that the corruption of the privilege by bribery, is denounced as a crime; and that adherents to a public enemy, conspirators against established authority, and felons are held to be unfit, and unsafe depositaries of a privilege, the disinterested, honest and faithful exercise of which is so vital to the preservation of public justice and tranquility. In no case, so far as we have learned, has the right of suffrage ever been conferred on all the citizens of any State. In many of them, the qualifications prescribed for its exercise, are such, that large numbers of the citizens are altogether excluded from its enjoyment, while in others, the privilege, where once conferred, has been withdrawn and bestowed on citizens not before possessed of it. By the first Constitution of this State, adopted in 1776, the right of suffrage was limited to all freemen, without regard to color, above the age of twenty-one years, having a freehold of fifty acres in the county of the voter's residence, and to all freemen having property in the State, above the value of thirty pounds current money."

"In 1802, a radical change was made in this provision of the organic law by an amendment, which declared, '*that every* WHITE *male citizen of this State, and no other, above the age of twenty-one years,*' having resided, &c., should '*have a right of suffrage.*' It is unnecessary, however, to multiply illustrations of this exercise of the sovereign power of the States. In this particular it is sufficient, for our present purpose, to show that the elective franchise, as a privilege of the citizen, is a matter, of which, the people of the State have the absolute control."

Weisel, J. (pp. 596, 597):

"The right of suffrage is not an original, indefeasible right, even in the most free of Republican Governments; but every civilized society has uniformly fixed, modified and regulated it for itself, according to its own free will and pleasure, and in these United States, every Constitution of Government has assumed, as a fundamental

principle, the right of the people of a State to alter, abolish and modify the form of its own Government, according to the sovereign pleasure of the people. The right to vote, like the right to hold office, being thus conferred upon the voter by the sovereign will of the people in their organic law or Constitution of Government, the question, upon whom it ought to be conferred, and what should constitute its boundaries and limits; in other words, what should qualify and what should disqualify, is one which the people themselves are to settle. So various are the circumstances, habits, wants, character, conditions, pursuits, dangers and difficulties of different people, that no fixed or certain rule can be laid down, by which the right of suffrage can be imparted. No one has ever yet pretended that the right should be universal, in the most enlarged or extended sense of that term, so as to embrace every age, sex, character and condition. In every State in the American Union, females are excluded from voting and holding office, though taxable citizens, and represented in legislative bodies; so with regard to minors, though they, of the male sex, in addition to being taxed if owners of property, and represented, are also required to bear arms when of the required military age and bodily constitution. In most of the States, Africans are excluded, though they may be taxed, and, under certain circumstances of age, sex, &c., required to do military duty. And even in the qualified class, exceptions are made; in other words, disqualifications imposed. If, for instance, all free white male persons over twenty-one years of age be qualified to vote under a general provision, exceptions can be made, and generally are made, so as to exclude from the qualified class those who are aliens, idiots, insane, paupers, &c., or those who may have been convicted of crime, or those who may have by any means, rendered themselves dangerous depositories of such a privilege. All these regulations and limitations are, in my judgment, clearly acts of sovereign power, to be exercised or not; and if exercised, to such degree or extent, as the sovereign power shall determine. The common good of the whole, is the end proposed by every well organized society, and if a restriction of the right of suffrage be deemed necessary or expedient by the sovereign power to attain this end, under the circumstances

in which the public interests are placed, there can be no valid objection so to exercise this authority. A liberal exercise of the power may at one stage in the history of a people, be proper and judicious, whilst, at another, a more restrictive policy may be demanded. And what one people may regard as essential, another, at the same time and under similar circumstances, may consider injurious or prejudicial, and therefore, may make different provision to avoid the danger. These principles and views Justice Story deduces from all the leading authorities upon this subject—the best writers upon natural and constitutional law, both of our own country, and those countries in Europe, in which liberal institutions have in any form or at any time existed.

1 Story on Constitution, section 577 to 584."

Bowie, C. J. (pp. 619, 620):

"Among the absolute, unqualified rights of the State, is that of regulating the elective franchise. It is the foundation of State authority. The most important political function exercised by the people in their sovereign capacity. The 3d Article of the Declaration of Rights affirms, 'that the people of this State ought to have the *sole and exclusive right* of regulating the internal government and police thereof.'

"Whilst 'the right of the people to participate in the Legislature is the best security of liberty and foundation of all free government,' yet it is subordinate to the higher power of regulating the qualifications of the electors and the elected. The original power of the people, in their aggregate political capacity, is delegated in the form of suffrage to such persons as they deem proper, for the safety of the Commonwealth, hence the right is limited to '*every free white male citizen* having the qualifications prescribed by the Constitution.' *Citizenship and suffrage are by no means inseparable; the latter is not one of the universal inalienable rights with which men are endowed by their Creator, but is altogether conventional.*

"Story, treating of this subject, says: 'Every Constitution of government in these United States has assumed, as a fundamental principle, the right of the people of the State to alter, abolish and modify the

form of its own government, according to the sovereign pleasure of the people. In fact, the people of each State have gone much further, and settled a far more critical question, by deciding who shall be the voters entitled to approve and reject the Constitution framed by a delegated body under their direction.' 1 *Story on Const., ch.* 9, *sec.* 581. * * * * 'From this it will be seen how little, even in the most free of republican governments, any abstract right of suffrage, or any original and indefeasible privilege has been recognized in practice.' *Id.* * * * * 'In no two of these State Constitutions will it be found that the qualifications of the voters are settled upon the same uniform basis, so that we have the most abundant proofs that among a free and enlightened people, convened for the purpose of establishing their own forms of government, and the rights of their own voters, the question as to the due regulation of the qualifications, has been deemed a matter of mere State policy, and varied to meet the wants, to suit the prejudices, and to foster the interests of the majority. An absolute, indefeasible right to elect or be elected, seems never to have been asserted on one side, or denied on the other; but the subject has been freely canvassed, as one of mere civil polity, to be arranged upon such a basis as the majority may deem expedient, with reference to the moral, physical and intellectual condition of the particular State.' *Id. sec.* 582.

"None of the elementary writers include the right of suffrage among the rights of property or person. It is not an absolute, unqualified, personal right."

See also—Cooley's Principles of Constitutional Law, 276, 277.

Gougar vs. Timberlake, 148 Indiana, 38.

Black's Constitutional Law, 466.

Story on Constitution, section 581.

B.

Its Origin.

Before the Fourteenth Amendment the whole subject of the elective franchise was within the exclusive control of the

several States and the right or privilege of voting was (as it still is) *a right or privilege arising under the Constitution of each State and not under the Constitution of the United States.*

Anderson vs. Baker, 23 Md. 623.
Cooley's Principles of Const. Law, 277.
Kineen vs. Wells, 144 Mass. 497.

In the last case, Devens J, speaking for the Court, says:

"The qualifications of voters are fixed by State legislation. The requirements as to ownership of property, citizenship, sex and *residence*, in connection with the right of voting, vary with the constitutions or laws of the several States. However unwise, unjust or even tyrannical its regulations may be, or seem to be, in this regard, the right of each State to define the qualifications of its voters is complete and perfect, except so far as it is controlled by the Fifteenth Amendment, which declares 'that the right of citizens of the United States shall not be denied or abridged by the United States, or by any State, on account of race, color or previous condition of servitude.'"

To the same effect are—

Stone vs. Smith, 159 Mass. 413.
Gougar vs. Timberlake, 148 Indiana, 38.
16 Albany Law Journal, 272.
U. S. vs. Susan B. Anthony, 11 Blatchford C. C. 202, 205.
Van Valkenburg vs. Brown, 43 California, 43.

More than two hundred cases bearing upon the Fourteenth Amendment have been decided by this Court, but of these only a few involved the question of State suffrage as touched by the Constitution of the United States either before or after that Amendment.

In Minor vs. Happersett, 21 Wallace, 178, it was held (Chief Justice Waite delivering the opinion of the Court)

that the Constitution of Missouri, which limits to *males* the right to vote does not violate the Fourteenth Amendment, for the reason that the right of suffrage was not one of the privileges or immunities of citizenship before that Amendment, and that the Amendment does not add to these privileges, but simply furnishes additional guaranty for the protection of such as the citizen already had: that neither at the time of the adoption of the Constitution or of the Fourteenth Amendment was suffrage co-extensive with citizenship of the States, and that neither the Constitution nor the Fourteenth Amendment made all citizens voters.

The question was again considered in United States vs. Reese, 92 U. S. 214. There the Chief Justice, again speaking for the Court, said (pages 217-218):

> "The Fifteenth Amendment does not confer the right of suffrage upon any one. It prevents the States, or the United States, however, from giving preference in this particular to one citizen of the United States over another on account of race, color or previous condition of servitude. Before its adoption this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, etc., as it was on account of age, property or education. Now it is not. If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment there was no constitutional guaranty against this discrimination. Now there is. It follows that the amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress—that right is exemption from discrimination in the exercise of the elective franchise on account of race, color or previous condition of servitude."

Again, the subject came up in United States vs. Cruikshank, 92 U. S. 542, and once more the Chief Justice, speaking for the Court, said (pages 555–6):

"In Minor vs. Happersett, 21 Wall. 178, we decided that the Constitution of the United States has not conferred the right of suffrage upon any one, and that the United States have no voters of their own creation in the States. In United States vs. Reese, we held that the Fifteenth Amendment has invested the citizens of the United States with a new constitutional right, which is exemption from discrimination in the exercise of the elective franchise on account of race, color or previous condition of servitude. From this *it appears that the right of suffrage is not a necessary attribute of national citizenship;* but that exemption from discrimination in the exercise of that right on account of race, etc., is. *The right to vote in the States comes from the States;* but the right of exemption from the prohibited discrimination comes from the United States—*the first has not been granted or secured by the Constitution of the United States;* but the last has been."

Under these carefully considered decisions, which have never been modified, we respectfully submit that suffrage is not a natural, fundamental, inalienable personal right, but that it is a creature of law and may be given upon terms and conditions prescribed by the sovereign power—given to some and withheld from others—that from the beginning of our Government, down to the adoption of the Fifteenth Amendment, the whole subject was confided, exclusively, to the control of the several States without limitation, reservation or restriction—that it was not one of the "privileges and immunities" embraced in and covered by Section 2 of Article 4 of the Constitution of the United States, which declares that "the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States"—that it was not made one of the privileges and immunities of citizens of the United States, nor was the absolute control of the States over it existing at the time of the adoption of the Fourteenth Amendment at all affected, impaired or abridged by that Amendment; and that since the adoption of the

Fifteenth Amendment the whole control over suffrage and the power to regulate its exercise is still left with and retained by the several States, with the single restriction that they must not deny or abridge it on account of race, color or previous condition of servitude.

United States vs. Harris, 106 U. S. 636-644.
James vs. Bowman, 190 U. S. 127.

There are, it is true, the two provisions, first, that while "the times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof, the Congress may at any time by law make or alter such regulations except as to the places of choosing Senators."

Constitution, Article 1, Section 4.
Ex parte Siebold, 100 U. S. 371.
Ex parte Clarke, 100 U. S. 399.
Ex parte Yarbrough, 110 U. S. 651.
In re Coy, 127 U. S. 731.
Logan vs. U. S., 144 U. S. 263.

And, second, that "The Congress may determine the time of choosing the electors and the day on which they shall give their votes; which day shall be the same throughout the United States." *Neither of these reservations applies to the present case.*

Accordingly, the States may prescribe any qualification of age, sex, residence, property or education which they shall see fit to prescribe, provided only that their Constitution and laws regulating the subject shall apply equally, uniformly and impartially to white and colored, native and naturalized alike.

Therefore, inasmuch as section 25 B makes no distinction or discrimination on account of race, color or previous condi-

tion of servitude, but in express terms applies to "*all* persons," it does not impair, abridge, affect, or even touch any privilege or immunity of the plaintiff in error which is covered by the guaranty of the Fourteenth Amendment.

Williams vs. Mississippi, 170 U. S. 213.
Gibson vs. Mississippi, 162 U. S. 582.
Giles vs. Harris, 189 U. S. 475.
James vs. Bowman, 190 U. S. 127.

III.

If these views be sound, it necessarily follows that the plaintiff has no just or lawful ground of complaint against the Act.

It is a part of the general election law of Maryland, in force in July, 1902, when he chose to come into the State. It is applicable, *equally and impartially, to* ALL *persons* who, after its passage, see fit to remove into Maryland from any other State, district or territory. It exacts from all such persons, as a preliminary to their acquisition of a right to register and vote, a simple record by the clerk of the Circuit Court of their intent to become citizens and residents of the State, upon their mere statement of such intent. The plaintiff, with actual knowledge of the law, deliberately refused to obey it. He did not go in person to the county seat and ask to be registered. He did not even send (as he might have done) a statement to the clerk of his removal into the county, together with his name, age, residence and occupation, and his intention to acquire a legal residence in the State.

After thus wilfully disregarding the law passed for the protection of the people of the State against the evils of fraudulent, dishonest or erroneous voting by persons not really, truly and *bona fide* citizens and residents of the State (this protection consisting in the establishment of a simple, inexpensive, easy and reasonable test of residence), he now appeals to this Court to sustain him in his wilful defiance

of its provisions, and to take, for the first time in its history, jurisdiction over a subject heretofore belonging exclusively to the States and to which the judicial power of the United States has never been extended from the foundation of the Government to this day.

We ask that his appeal for relief be denied.

IV.

But if it can be assumed that this contention on behalf of the defendants is too extreme, and that even in respect of a matter solely relating to State suffrage *confessedly not affected by the Fifteenth Amendment*, this Court can review the judgment of the Court of Appeals, we respectfully contend that none of the points assigned as errors can be sustained.

A.

As to the performance of alleged "offensive, vexatious and oppressive conditions as a prerequisite to the acquisition and enjoyment of CIVIL *rights and privileges."*

As already shown, the Court of Appeals held that the requirement of registration of name, age, occupation and residence prescribed by the State law is a reasonable regulation. There ought not to be any room to doubt that this is a correct exposition of the law. There is nothing in it which compels a personal visit to the county seat and a registration there in person. And if there were, such a requirement is not burdensome and no more troublesome than the visit to the office of the Board of Registry to be registered as a voter. Doubtless, the going to the clerk's office is an easy mode of compliance. But if for any reason a person desiring registration should find it inconvenient to go to the clerk, in his office at the county seat, the clerk, upon invitation, could easily go to the person at his home. A postal card, costing one cent, would promptly secure this official attention.

And again, a written declaration of the applicant for registration stating his name, age, occupation and residence,

and his intention to become a citizen and resident of the State sent by mail or messenger to the clerk would be sufficient. No clerk under the Statute could lawfully refuse to make the prescribed entry when notified in either of these modes, and this Court cannot suppose that any Maryland Court would hesitate to secure registration to any petitioner wrongfully denied registration by the clerk when thus applied to.

It is difficult to discuss seriously such a microscopic objection to the law, or to consider without merriment the grave and solemn picture which the plaintiff draws of the terrible hardships the law inflicts upon the individual who is so eager to become a qualified voter in Maryland that he will not spend a postage stamp to make known his wish and intention to the clerk of the Court!!

But further, the right which the plaintiff claims that the Act denies or abridges, is not, as he mistakenly calls it, a "fundamental and inalienable right." It is merely the right to vote; the regulation of which right belongs exclusively to the State; nor is it even a *civil* right or privilege, but altogether a *political* right, not necessarily resulting from citizenship and over the acquisition and enjoyment of which the judicial power of the United States has no jurisdiction or control whatever, except in cases falling within and governed by the 15th Amendment.

Scott vs. Sandford, 19 Howard, 393.
Ward vs. Maryland, 12 Wall. 418.
Slaughter-House Cases, 16 Wall. 79.
Neale vs. Delaware, 103 U. S. 370.
Ex parte Yarbrough, 110 U. S. 651.
Mills, J., in Amy vs. Smith, 1 Litt. (Ky.) 326.
Lanz vs. Randall, 4 Dill. 425.
Short vs. State, 80 Md. 401-2.
Anderson vs. Baker, 23 Md. 531.

There is accordingly no force in the plaintiff's first assignment of error.

B.

As to the alleged denial by the State law of "the equal protection of the laws."

It is somewhat difficult to apprehend what is meant by this objection; but here too even if we assume that notwithstanding the law deals with the subject of State suffrage, and even if we further assume that the right to vote is a "privilege and immunity" within the meaning of section 2 of Article 4 of the Constitution of the United States and of Section 1 of the Fourteenth Amendment, neither of these sections covers this case. The privileges and immunities protected are the privileges and immunities of *citizens of the United States*, and neither of these provisions was intended to control the power of the State government over the rights of its own citizens.

The protection designed by the clause of the Fourteenth Amendment declaring that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, as has been repeatedly held, has no application to a citizen of the State whose laws are complained of.

Bradwell vs. State, 16 Wall. 130.
In re Taylor, 48 Md. 28.
In re Maddox, 93 Md. 728-9.

As to the privileges and immunities belonging to the citizens of a State, these "must rest for their security and protection where they have heretofore rested," that is, with the State in which the citizen resides.

Slaughter-House Cases, 16 Wall. 74-75.
Presser vs. Illinois, 116 U. S. 266.
Short vs. State, 80 Md. 401.

By removing into Maryland the plaintiff became a citizen of that State and voluntarily subjected himself to the operation of her laws, Why then shall he not be bound by them?

But giving effect *ex gratia* to the extreme contention (which it is believed this Court has never sanctioned) that the effect of the Fourteenth Amendment is to impose upon the States the prohibitions of the first ten Amendments, and that the clause in the Fourteenth Amendment that no State shall "deny to any person within its jurisdiction the equal protection of the laws," applies to the election laws of the several States, and, that where such laws do not give equal protection to all the citizens of the State in respect of the exercise of the elective franchise, this Court has the power to adjudge such laws void for that reason, we maintain that Section 25 B does not deny equal protection to any person covered by its provisions, and hence is not in conflict with that clause (or any clause) of the Amendment.

The law only imposes upon the plaintiff the same obligation which it requires of all other persons similarly situated. It operates on *all* such persons *equally and alike.*

Decisions of this Court, since the celebrated Slaughter-House Cases, 16 Wallace, 36, do not justify the doubt, expressed by Mr. Justice Miller in his great opinion in those cases "whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race will ever be held to come within the purview of this provision." But, certainly all must agree with him that "it is so clearly a provision for that race and that emergency that *a strong case would be necessary for its application to any other.*"

Is it possible to fairly claim that such a strong case is presented here?

In considering this aspect of the case, a clear understanding of the precise meaning of the phrase "equal protection of the laws" is obviously essential.

The question has come before this Court, in a great variety of ways and has been fully considered, copiously illustrated and may well be said to be now absolutely settled.

Equality of protection extends only to *civil* rights as distinguished from those that are *political* or arise from the form of the government and its mode of administration.

Field J., *Ex parte*, Virginia, 100 U. S. 637-8.

Equal protection of the laws is a pledge of the protection of equal laws.

Yick Wo vs. Hopkins, 118 U. S. 369.

This clause contemplates persons and classes of persons.

It is not violated by any diversity in the jurisdiction in the several courts as to subject matter, amount or finality of decision, if all persons within the territorial limits of their respective jurisdictions have an equal right in like cases and under like circumstances to resort to them for redress.

Missouri vs. Lewis, 101 U. S. 30-31.

A statute applicable to all lands of the same kind is not in conflict with the clause.

Wurts vs. Hoagland, 114 U. S. 615.

Class legislation discriminating against some and favoring others is prohibited, but legislation, which in carrying out a public purpose is limited in its application if within the sphere of its operation it affects alike all persons similarilarly situated, is not within the amendment.

Munn vs. Illinois, 94 U. S. 134.
Chicago R. R. Co. vs. Iowa, 94 U. S. 163.
Barbier vs. Connolly, 113 U. S. 27-32.
Soon-Ling vs. Crowley, 113 U. S. 703.
Missouri Pacific R. R. Co. vs. Humes, 115 U. S. 523.

Kentucky R. R. Tax Case, 115 U. S. 337.
Presser vs Illinois, 116 U. S. 266.
Hayes vs. Missouri, 120 U. S. 71, 72.
Dow vs. Biedelman, 125 U. S. 691.
Missouri R. R. Co. vs. Mackey, 127 U. S. 209, 210.
Powell vs. Pennsylvania, 127 U. S. 687.
Walston vs. Nevin, 128 U. S. 582, 583.
Minnesota R. R. Co. vs. Beckwith, 129 U. S. 29.
Home Ins. Co. vs. New York, 134 U. S. 606, 607.
Marchant vs. Pennsylvania R. W., 153 U. S. 389, 390.
St. Louis and San Francisco R. Y. vs. Mathews. 165 U. S. 24-26.
Gulf C. & S. F. R. W. vs. Ellis, 165 U. S. 155.
Orient Ins. Co. vs. Daggs, 172 U. S. 557.
Ins. Co. vs. Warren, 181 U. S. 73.
Ins. Co. vs. Mettler, 185 U. S. 308.
Billings vs. Illinois, 188 U. S. 97.
Kidd vs. Alabama, 188 U. S. 730.
Farmers' Ins. Co. vs. Dobney, 189 U. S. 301.
Short vs. State, 80 Md. 402.
Brannon on 14th Amendment, Chapter 16.
Equal Protection of the Laws, 315-380.
Guthrie on 14th Amendment, 106-142.

There is, therefore, no force in this assignment of errors.

C.

As to the alleged denial or abridgment of the right or privilege of the plaintiff, derived from the Constitution of the United States, to wit., his status of resident and citizen of Maryland.

The 14th Amendment made the plaintiff a *citizen* of the United States. When he removed into Maryland, he became also a citizen of Maryland by virtue of his being a citizen of the United States, *but he did not thereby become entitled to vote. His right to vote depends upon his complete acquisition of the qualifications prescribed by her Constitution and laws.*

The RESIDENCE *necessary to entitle him to be registered as a qualified voter he has never acquired,* for the reason that he has never manifested the intent to acquire such residence by furnishing the specific evidence of such intent, which the State law requires as *"the only competent and admissible evidence of such intent."*

He now asks this Court to relieve him from the necessity of furnishing such proof and to declare that he shall be conclusively presumed to be entitled to registration as a qualified voter from the *simple fact* that he is now living and has been living (as he asserts) in Montgomery county for more than one year, and he asks this in the teeth of the State law, which forbids such presumption and exacts other specific proof.

Surely the 14th Amendment can not be so interpreted as to bring about such a result. It does not make the plaintiff a citizen of Maryland and thereby give him the right to vote irrespective of her Constitution and laws passed in conformity with its provisions.

It does not annul the qualification of residence and intention to become a citizen prescribed by the State Constitution, and substitute for the evidence of such intention required by the State law other and different and, under the State law, incompetent and inadmissible evidence.

It does not mean that the State cannot lawfully declare by legislation how the necessary qualification of *residence* shall be proved, and that no matter how incomplete and objectionable the old vague and troublesome rules of evidence have been found by experience to be, she cannot repeal, amend, alter and improve them, so as to remedy an evil which disturbs the proper administration which she desires of her own internal State and county government.

It does not extend the judicial power of the United States to such a case as that presented by this record, nor furnish ground for a decree annulling a State law which relates merely to the mode and measure of proving the essential fact of residence as a qualification for the registration of

voters, where no distinction whatever is made on account of race, color or previous condition of servitude.

This assignment of errors cannot therefore be sustained.

V.

But apart from all these considerations the 14th Amendment does not touch the case at all. A State law relating to suffrage is not within its provisions, and if the State law be not contrary to the 15th Amendment, this Court has no power to declare it void or to pass at all upon its expediency, wisdom or validity.

Recurring to the language of this Amendment—considering it as a whole and examining its several clauses—bearing in mind the great historic event which led to its adoption, and the primary and paramount purpose which it was intended to accomplish, there can be no room to doubt that it was never designed to deprive the States of the control over the suffrage which they had possessed and exercised from the beginning of our federal government.

Up to the time of its adoption Congress had never even attempted to regulate "the times, places and manner of holding elections for senators and representatives, as authorized by section 4 of Article 1 of the Constitution, but had left the subject to State legislation exclusively.

Ex parte Siebold, 100 U. S. 371.
Ex parte Yarbrough, 110 U. S. 651.
In re Coy, 127 U. S. 731.

The framers of the amendment never contemplated any interference by force of its provisions with this time-honored State's right.

Slavery having been abolished by the Thirteenth Amendment, their purpose in the Fourteenth Amendment was to make the negro a citizen *of the United States*, and thus to overrule and reverse forever the decision of this Court in the Dred Scott Case that he was not such citizen. The first clause accomplishes this purpose completely. The subsequent clauses of the first section were designed to secure to

the freedmen thus enfranchised and made citizens the rights and immunities of citizens of the United States throughout the entire Union; to protect them in their natural right to life, liberty, property and the pursuit of happiness; and as to all these vital, fundamental and inalienable rights to make them the equals before the law of white men in their civil rights, by a constitutional guaranty of this equality, and a prohibition against its denial or abridgement.

The *political* right or privilege of the suffrage was, however, left untouched. No clause of the first section of the amendment had any reference to it; but complete control over it was still reserved by the States without diminution.

That this was the scheme and scope, purport, meaning and intent of the amendment is demonstrated by two conclusive considerations: *First.* By the clear and unmistakable language of the second section; and, *Second*, by the subsequent adoption of the Fifteenth Amendment in order to secure to the colored man the guaranty of constitutional immunity from hostile discrimination in respect to suffrage, which it was conceded the Fourteenth Amendment did not furnish.

Field, J., *ex parte* Virginia, 100 U. S. 365–8.

If the first section of the Fourteenth Amendment was designed to apply to the question of suffrage and to limit and restrict the previous unlimited and unrestricted control of the States over that subject; if it was intended to deny to the States their absolute dominion over the qualifications of voters, such intent would not have been left to forced and strained implication, but would have been clearly expressed in words whose meaning and force could not be doubted or misunderstood. If its purpose had been to declare void all State legislation which did not grant manhood suffrage without discrimination or restriction, apt language to make this purpose plain would have been used.

But to say to the States that when the right to vote shall be denied or abridged by them for any cause "except participa-

tion in rebellion or other crime," the penalty shall be reduction in congressional representation, is not to deny to them the legal right to deal with their State suffrage as they deem best, but simply to subject them to the prescribed penalty if they should deny or abridge the right to vote except for the enumerated causes. So far from its being a denial of this State right, it is on the contrary a distinct recognition of its continued existence.

The choice was left to them to give to the freedmen the right to vote, or not to give it. But if they did not give it, they were to suffer a diminution in their congressional representation as the *sole* penalty of their refusal. No doubt the statesmen who prepared the Fourteenth Amendment supposed that the terrors of this penalty would not only deter the Southern States from withholding suffrage from the negro, but that it would stimulate its bestowal upon him. But obviously this expectation is very far from a denial of the right of the States to prefer the loss of their congressional representation to a loss of their right to regulate the elective franchise to suit themselves.

If "participation in rebellion or other crime" is the only ground upon which the right to vote could lawfully be denied or abridged under the Fourteenth Amendment, what shall be said of the validity of the educational test, or the property qualification, or the production to election officials of tax receipts, exacted by the constitution and laws of a number of the States?

Did Massachusetts violate the Fourteenth Amendment when she denied suffrage to her illiterate thousands? When Connecticut prescribed ability to read as the necessary test of the right of her citizens to vote, did she deny to them the equal protection of the laws as guaranteed by the Amendment? Clearly not.

Cooley's Principles of Constitutional Law, 291-2.

All this, too plain for reasonable controversy upon the face of the Fourteenth Amendment, is reduced to absolute certainty by the adoption of the Fifteenth Amendment.

If it be true that the Fourteenth Amendment was intended or supposed to restrict the power of the States to legislate in their Constitutions and statutes over the whole subject of suffrage as they severally saw fit, there was no necessity or even occasion for the Fifteenth Amendment. Indeed, the Fifteenth Amendment owes its origin to the conceded fact that neither the Thirteenth nor the Fourteenth Amendment, nor both of them combined, gave the suffrage to the negro or denied to the State the right to exclude him from voting, if they chose to submit to a reduction of their representation in Congress rather than clothe him with the elective franchise.

And accordingly this last Amendment has no application to the question of suffrage, and does not touch the power of the States over suffrage, *except in so far as relates to race, color or previous condition of servitude.*

The States still have their power unrestricted over the elective franchise in all other respects.

Tests, qualifications, disqualifications, denials, abridgments, distinctions, inequalities, may still lawfully be made at the pleasure of the States, provided only they do not discriminate against the negro.

If they apply equally, impartially and uniformly to white and black citizens alike, they are not condemned by the letter or the spirit of the Thirteenth, Fourteenth and Fifteenth Amendments. They may perhaps cost the States a reduction in their Congressional representation in the proportion in which the number of adult males disfranchised by such State legislation bears to the whole number of its adult male population. *But this is the only legal consequence,* and there is no warrant for the contention that the federal judiciary can also declare such legislation absolutely void.

Bearing in mind then that the plaintiff is a white man, and that he concedes that the Maryland law is not at all repugnant to the Fifteenth Amendment, it necessarily follows that as a law relating solely to State suffrage it is not repugnant to or touched by the Fourteenth Amendment, and that, accordingly, this Court has no power to declare it null and void.

Slaughter House Cases, 16 Wall. 81-82.

VI.

We respectfully submit, therefore, that no error can be found in the judgment and decison of the Court of Appeals, and that if the Court shall not sustain our motion to dismiss the writ of error, the judgment of the Court of Appeals should be affirmed with costs.

JOHN PRENTISS POE,
BOWIE F. WATERS,
For Defendants in Error.

Supreme Court of the United States.

No. 503—October Term, 1903.

William H. Pope, Plaintiff in Error,
vs.
John M. C. Williams and John W. Harper, Officers of Registration constituting the Board of Registry for Election District No. 7 of Montgomery County, Maryland.

In error to the Court of Appeals of the State of Maryland.

[April 4, 1904.]

This is a writ of error to the Court of Appeals of the State of Maryland, to review its judgment affirming that of the Circuit Court for Montgomery County, which affirmed the proceedings of the board of registry of election district No. 7 of that county, refusing to register petitioner as a legal voter on the ground of his non-compliance with the Maryland law making it necessary for a person coming into the State, with the intention of residing therein, to register his name with the clerk of the Circuit Court of the proper county, and thereby to indicate the intent of such person to become a citizen and resident of the State.

The act in question was passed March 29, 1902, as chapter 133 of the laws of that year, and as an amendment and supplement to the Public General Laws of the State, title "Elections," sub-title "Registration," as section 25*b*, and it is reproduced in the margin.*

*Sec. 25*b*. All persons who after the passage of this act shall remove into any county of this State or into the city of Baltimore from any other State, District or Territory, shall indicate their intent to become citizens and residents of this State by registering their names in a suitable record book, to be procured and kept for the purpose by the clerk of the Circuit Court for the several counties, and by the clerk of the Superior Court of Baltimore city; such record to contain their names, residence, age and occupation; and the intent of such persons to become citizens and residents of this State shall date from the day on which such registry shall be so entered in such record book by the clerk of the Circuit Court for the county, or of the Superior Court of Baltimore city, as the case may be, into which county or city such person shall so remove from any other State, District or Territory. And no person coming into this State from any other State, District or Territory shall be entitled to registration as a legal voter of this State until one year after his intent to become such legal voter shall be thus evidenced by such entry in such record book, and such entry or a duly certified copy thereof shall be the only com-

Plaintiff in error on September 29, 1903, presented his application to the board of registry of election district No. 7, Montgomery County, Maryland, then sitting at a place within such district, to be registered and entered as a qualified voter on the registry of voters of that election district, which application the board refused and declined to comply with, for the sole reason that he had not complied with this law of Maryland. Thereafter the plaintiff presented a sworn petition to the Circuit Court for Montgomery County, in the State of Maryland, praying that court to enter an order to revise the action of the board of registry, and to order and direct that the name of the petitioner should be entered as a qualified voter on the registry of voters of the election district already named. In that sworn petition he alleged that he had on June 7, 1902, with his wife and child, removed from the city of Washington, District of Columbia, into Montgomery County, in the State of Maryland, "having then had and ever since and now having the intention of making the State of Maryland the permanent domicil of himself and his family, and of becoming a citizen of said State; and ever since said June 7, 1902, petitioner has resided in the subdivision of Otterbourne, near Chevy Chase, in said Montgomery County, and in the seventh election district of said county."

The petitioner further showed in his petition that he had made application to the proper board of registry in the election district mentioned, and the board had refused to enter his name as a qualified voter on the ground already stated, of non-compliance with the Maryland statute.

The petitioner admitted "that he did not within a year prior to said application for registration as a qualified voter, or at any time during the year 1902, in any manner, make or register, in the office of or before the clerk of Montgomery County, Maryland, or in a record book kept by said clerk, a declaration of intention to become a citizen and resident of Maryland, such as is required by the aforesaid law to be made by persons who remove into the State of Maryland after March 29, 1902, as a condition precedent to subsequent registration of such persons as qualified voters.

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petent and admissible evidence of such intent. And the clerk of the Superior Court of Baltimore city and of the several courts of the several counties shall immediately, upon the passage of this act, procure a suitable record book for the recording therein of such entries, arranged alphabetically under the names of such persons. For every person so registered under the provisions of this section they shall be entitled to demand and receive the sum of twenty-five cents, to be paid to said clerks by the mayor and city council of Baltimore and the county commissioners respectively. A copy of such record duly certified by said clerk shall be evidence of the right of such person to registration as legal voters according to law, and each person so registered shall be entitled to such certified copy upon demand without charge.

Petitioner, however, claims and asserts that said section 25*b* of article 33 of the Code of Public General Laws of Maryland affords no justification for said refusal to register your petitioner as a qualified voter, because said alleged law contravenes and is repugnant to the Constitution of the United States and the constitution of Maryland, and is, therefore, null and void."

The petitioner then asserts and sets forth in his petition several grounds which, as he therein alleges, render the State law a violation of the constitution of the State of Maryland, and he also specially sets up and claims that the law is a violation of the Constitution of the United States in the particulars named by him, and which are as follows:

"Said law is repugnant to that portion of section 1 of the Fourteenth Amendment of the Constitution of the United States, which declares that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside,' because by said law it is in effect ordained that male citizens of the United States of the age of twenty-one years and upwards, removing into the State of Maryland after March 29, 1902, with the intention of making said State their permanent domicil, shall not be treated as citizens or residents of Maryland, or given the rights and privileges of citizens of Maryland, until they have been naturalized in the mode prescribed by said law.

"Said law is also repugnant to that portion of section 1 of said Fourteenth Amendment to the Constitution of the United States which prohibits a State from denying any person within its jurisdiction the equal protection of the laws, because said law operates an unjust and unreasonable discrimination against citizens of the United States coming into the State of Maryland to permanently reside therein after March 29, 1902, who may desire to become qualified voters therein.

"Said law is also repugnant to the general spirit of the Constitution of the United States and the fundamental rights of citizens of the United States, which deny to a State the power to attach unreasonable or burdensome conditions to the free movement of citizens of the United States out of, into and settlement within the confines of any State, District or Territory within the United States."

To this petition there was a general demurrer, which was sustained by the court, which thereupon entered judgment dismissing the petition with costs to the defendants.

Mr. Justice PECKHAM, after making the above statement of facts, delivered the opinion of the Court.

This is not a case of a statute of the State having been passed subsequently to the time when the individual had removed from another State or from a Territory or from the District of Columbia into the State of Maryland. There is, therefore, no alteration of any possible rights which

the plaintiff in error might have already acquired and which he might claim were taken from him by the passage of such statute. On the contrary, this statute took effect on March 29, 1902, more than two months prior to the removal of the plaintiff in error from Washington in the District of Columbia to Montgomery County, within the State of Maryland. The objections of a Federal nature, which are made by the plaintiff in error, to the validity of the statute are set out in his petition, and are also contained in the above statement of facts, and are substantially reproduced in his assignment of errors.

We are of opinion that the statute does not violate any Federal right of the plaintiff in error which he seeks to assert in this proceeding. The statute, so far as it concerns him and the right which he urges, is one making regulations and conditions for the registry of persons for the purpose of voting. It was only for the purpose of thereafter voting that the plaintiff in error sought to be registered, and it was the denial of that right only which he can now review. His application for registry as a voter was denied by the board of registry solely because of his failure to comply with the statute. Whatever other right he may have as a citizen of Maryland by reason of his removal there with an intent to become such citizen, is not now in question. So far as appears no other right, if any he may have, has been infringed by the statute. The simple matter to be herein determined is whether, with reference to the exercise of the privilege of voting in Maryland, the legislature of that State had the legal right to provide that a person coming into the State to reside should make the declaration of intent a year before he should have the right to be registered as a voter of the State.

The privilege to vote in any State is not given by the Federal Constitution, or by any of its amendments. It is not a privilege springing from citizenship of the United States. (*Minor* v. *Happersett*, 21 Wall. 162.) It may not be refused on account of race, color or previous condition of servitude, but it does not follow from mere citizenship of the United States. In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution. The State might provide that persons of foreign birth could vote without being naturalized, and, as stated by Mr. Chief Justice Waite in *Minor* v. *Happersett*, (*supra*,) such persons were allowed to vote in several of the States upon having declared their intentions to become citizens of the United States. Some States permit women to vote; others refuse them that privilege. A State, so far as the Federal Constitution is concerned, might provide by its own constitution and laws that none but native-born citizens

should be permitted to vote, as the Federal Constitution does not confer the right of suffrage upon any one, and the conditions under which that right is to be exercised are matters for the States alone to prescribe, subject to the conditions of the Federal Constititution, already stated; although it may be observed that the right to vote for a member of Congress is not derived exclusively from the State law. See Federal Constitution, Art. 1, sec. 2; *Wiley* v. *Sinkler*, (179 U. S. 58.) But the elector must be one entitled to vote under the State statute. (Id., Id.) See also *Swafford* v. *Templeton*, (185 Id. 487, 491.) In this case no question arises as to the right to vote for electors of President and Vice President, and no decision is made thereon. The question whether the conditions prescribed by the State might be regarded by others as reasonable or unreasonable is not a Federal one. We do not wish to be understood, however, as intimating that the condition in this statute is unreasonable or in any way improper.

We are unable to see any violation of the Federal Constitution in the provision of the State statute for the declaration of the intent of a person coming into the State before he can claim the right to be registered as a voter. The statute, so far as it provides conditions precedent to the exercise of the elective franchise within the State, by persons coming therein to reside, (and that is as far as it is necessary to consider it in this case,) is neither an unlawful discrimination against any one in the situation of the plaintiff in error nor does it deny to him the equal protection of the laws, nor is it repugnant to any fundamental or inalienable rights of citizens of the United States, nor a violation of any implied guaranties of the Federal Constitution. The right of a State to legislate upon the subject of the elective franchise as to it may seem good, subject to the conditions already stated, being, as we believe, unassailable, we think it plain that the statute in question violates no right protected by the Federal Constitution.

The reasons which may have impelled the State legislature to enact the statute in question were matters entirely for its consideration, and this court has no concern with them.

It is unnecessary in this case to assert that under no conceivable state of facts could a State statute in regard to voting be regarded as an infringement upon or a discrimination against the individual rights of a citizen of the United States removing into the State and excluded from voting therein by State legislation. The question might arise if an exclusion from the privilege of voting were founded upon the particular State from which the person came, excluding from that privilege, for instance, a citizen of the United States coming from Georgia and allowing it to a citizen of the United States coming from New York or any other State In such case an argument might be urged that, under the Fourteenth

Amendment of the Federal Constitution, the citizen from Georgia was by the State statute deprived of the equal protection of the laws. Other extreme cases might be suggested. We neither assert nor deny that in the case supposed the claim would be well founded that a Federal right of a citizen of the United States was violated by such legislation, for the question does not arise herein. We do, however, hold that there is nothing in the statute in question which violates the Federal rights of the plaintiff in error by virtue of the provision for making a declaration of his intention to become a citizen before he can have the right to be registered as a voter and to vote in the State.

The plaintiff in error has no ground for complaint in regard to the decision of the courts below, and the judgment of the Court of Appeals of Maryland is, therefore,

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.